LIBRARY
SUPREME COURT, U.S.
No. 7044 81
JOHN T. FEY, Clerk

United States Court of Appeals
FOR THE SECOND CIRCUIT

In the Matter

of the

PETITION OF SKIBS A/S JOLUND as owner of the M/S "BLACK GULL" for exoneration from or limitation of liability.

MARIA A. VERBEECK, *et al.*,
Claimants-Appellants.

MARIA A. VERBEECK, *et al.*,
Libellants-Appellants,

—against—

BLACK DIAMOND STEAMSHIP CORP.,
Respondent-Appellee.

AMERICAN SMELTING & REFINING CO., *et al.*,
Libellants-Appellants,

—against—

BLACK DIAMOND STEAMSHIP CORP.,
Respondent-Appellee.

APPENDIX ON BEHALF OF CARGO CLAIMANTS-LIBELLANTS-APPELLANTS AND DEATH CLAIMANTS-LIBELLANTS-APPELLANTS

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Cargo and Death Claimants-Libellants-Appellants.

INDEX

PAGE

Docket Entries in Limitation Proceeding 1a

Petition of Skibs A/S Jolund, as Owner of the Motor Ship "Black Gull", for Exoneration and/or Limitation of Liability 16a

Order Amending Petition 22a

Affidavit of Anthony V. Lynch, Jr. 28a

Claim of American Smelting & Refining Co. 31a

Schedule "A", Particulars of Claim 34a

Answer of Claimants American Smelting & Refining Company, et al., to the Petition of Skibs A/S Jolund as Owner of the Motorship "Black Gull" as Amended 35a

Schedule "A", List of Claimants in Addition to American Smelting & Refining Company on whose behalf Answer is filed 38a

Claim of Maria A. Verbeeck, et al. 45a

Exhibit A, Translation of certain provisions of "Act Concerning the Entry into Force of the General Civil Penal Code" 48a

Answer of Maria Verbeeck, Maurice Verbeeck, Simon Verbeeck and Leo Verbeeck to the Petition of Skibs A/S Jolund as Owner of the M. S. "Black Gull" as Amended 51a

Docket Entries in American Smelting & Refining Company, et al. v. Black Diamond S. S. Corp. 54a

Libel and Complaint of American Smelting & Refining Company, et al. v. Black Diamond S. S. Corp. .. 61a

Schedule A, List of Libellants 68a

Index (Continued)

PAGE

Schedule B, Particulars of Shipments 78a

Schedule C, Tabulation of Damages 113a

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al. 119a

Docket Entries in Verbeeck, et al. v. Black Diamond S. S. Corp. 132a

Libel and Complaint of Maria Angelina Verbeeck, et al. v. Black Diamond S. S. Corp. 136a

Exhibit A, Translation of certain provisions of "Act Concerning the Entry into Force of the General Civil Penal Code" 140a

Answer of Black Diamond Steamship Corp. to the Libel and Complaint of Maria Angelina Verbeeck, et al. 142a

Testimony 145a

Libelants' Exhibit 35 Read into Record 303a

Exhibits 395a

Memorandum of Dimock, *D. J.* 491a

Amended Memorandum of Dimock, *D. J.* 500a

Second Amended Memorandum of Dimock, *D. J.* 510a

Findings of Fact and Conclusions of Law 521a

Final Decree in Limitation Proceeding 536a

Schedule "A"—List of Claimants 540a

Claimants' Notice of Appeal 546a

Index (Continued)

PAGE

Assignments of Error 551a

Final Decree in American Smelting & Refining Company, et al. v. Black Diamond S. S. Corp. 557a

Notices of Appeal of Cargo Libellants 558a, 563a

Final Decree in Maria Angelina Verbeeck, et al. v. Black Diamond S. S. Corp. 564a

Notice of Appeal of Libellants Maria Angelina Verbeeck, et al. 566a

Notice of Appeal of Claimants Maria Angelina Verbeeck, et al. 567a

LIBELANTS' WITNESSES

Hubert Hollaar:
Direct 147a

Fritjov Andersen:
Direct 222a

Chester A. Snell:
Direct 246a
(Rebuttal)
Direct 391a
Cross 394a

Joseph Mazzotta:
(Rebuttal)
Direct 387a
Cross 390a

Petitioner's Witnesses

PAGE

Nils Valen:
Direct 266a
Cross 273a

Gustave Olson:
Direct 282a
Cross 283a

Harry Kristiansen:
Direct 284a
Cross 285a

Fritjov Andersen:
Direct 313a
Cross 316a

Harvey Lyngaas:
Direct 323a
Cross 327a

Respondents' Witnesses

Marion W. Lohse:
Direct 332a
Cross 335a
Re-cross 341a

Hubert Hollaar:
Direct 342a
Cross 343a
Re-cross 354a

Svend A. Tang:
Direct 355a
Cross 355a

Respondents' Witnesses (Continued)

PAGE

A. G. Hagens:
Direct 357a
Cross 359a

Merle Allen:
Direct 360a
Cross 361a

Alvin C. Purdy:
Direct 364a
Cross 372a

DEPOSITIONS

Capt. W. J. Swart 166a

Harold Farstad:
Direct 167a
Cross 168a

J. A. Driesprong:
Direct 169a
Cross 171a

Jacobus deNobel:
Direct 172a
Cross 173a

Peter Spaanderman:
Direct 173a
Cross 174a

Jan P. Muller:
Direct 175a
Cross 175a

Thomas D. Leeson:
Direct 177a
Cross 179a

Depositions (Continued)

PAGE

Jeanne Leeson:
Direct 180a

Dr. Jules Aeby:
Preliminary Examination 183a
Direct 184a
Cross 263a
Re-direct 191a

Carlo van den Bosch:
Direct 192a

Dr. A. C. W. Beerman:
Direct 196a
Cross 203a
Re-direct 207a

Dr. Sjur Braekhus:
Direct 208a
Cross 208a, 257a

Pedrick D. Herlofsen:
Direct 210a
Cross 213a, 251a

Capt. Inge Svendsen:
Direct 253a
Cross 221a, 255a

Albert Zimmermann:
Cross 257a

Joseph Collard:
Direct 258a
Cross 259a

Francois Verworst:
Direct 260a
Cross 260a

Depositions (Continued)

PAGE

Dr. W. N. E. Van Rossem:
Direct 288a, 302a
Cross 290a, 304a

Dr. A. Blussee Van Oud-Alblas:
Direct 305a
Cross 307a

Capt. C. A. W. Bos:
Direct 311a
Cross 312a

LIBELANTS' EXHIBITS

6—Bill of lading covering naphthalene from Rotterdam (offsets) 395a

7—Stipulation dated August 15, 1955 .....396a

8—Stipulation dated August 5, 1955, and Affidavit..398a

9—Excerpts from Dr. Jules Aeby "Dangerous Goods" (3rd Ed., 1938) 405a

10—Excerpts from United States Coast Guard Regulations "Explosions or Other Dangerous Articles on Board Vessels" 422a

34A—Translation of Section 94 of the Netherlands Shipping Decree 456a

35—Translation of Letter of July 30, 1954 from Netherlands Inspector-General of Shipping 464a

45A—Translation of letter of September 13, 1952 to Chief Inspector of Dock Labour 466a

45B—Translation of letter of September 22, 1952 ...468a

Libelants' Exhibits (Continued)

PAGE

45C—Translation of letter of September 23, 1952 from Shipping Inspectorate 469a

45D—Translation of letter of October 7, 1952 from Inspectorate of Dock Labour 471a

45E—Translation of letter of July 23, 1954 to Inspector-General of Shipping 473a

RESPONDENTS' EXHIBIT

3—Plan of "Black Gull" showing stowage of deck cargo (offset) 475a-2

PETITIONERS' EXHIBITS

O—Photograph 477a

P—Photograph 479a

Q—Photograph 481a

R—Photograph 483a

S—Photograph 485a

T—Cardboard diagram of stow (photoprint) 487a

W—Translation of letter of May 3, 1954 from Shipping Inspectorate 488a

United States District Court

SOUTHERN DISTRICT OF NEW YORK

Ad. 174–34

(A)

In The Matter of the Petition of

SKIBS A/S JOLUND

as owner of the motor ship "BLACK GULL", in a cause of exoneration from and limitation of liability for damages arising out of a fire on board the "Black Gull" on July 18, 1952

Docket Entries

DATE		
Aug	7-52	Filed petition & stip. for pet. costs ($250. National Surety Corp.)
Aug	8-52	" order directing monition to issue and enjoining suits and directing filing of claims with the Clerk of the Court on or before September 16th, 1952 Knox Ch. J.
Aug	8-52	" order of reference for appraisal and provisional appraisal referred to Curtis E. Rouse Esq. Commissioner Knox Ch. J.
Aug	8-52	" order for ad interim stipulation Knox Ch. J.
Aug	8-52	" ad interim stipulation ($218,563.00 National Surety Corp.) approved Knox Ch. J.
Aug	21-52	" order amending petition Edelstein J.
Aug	22-52	Issued amended monition ret 9-30-52 Clerk

Docket Entries

DATE		
Aug 29-52	Filed	claim of Mr. and Mrs. Jan A. Driesprong and Wilhelmina Driesprong
Sep 12-52	"	notice of appearance of Industrial Sales Corp.
Sep 12-52	"	stip for costs ($250. Ind. Ins. Co. of N. A.)
Sep 12-52	"	claim of Pieter Spaanderman
Sep 12-52	"	claim of J. de Nobel
(B)		
Sep 12-52	"	motion papers to amend order for issuance of montion ret 9-16-52
Sep 8-52	"	claim of Mr & Mrs Thomas D. Leeson
Sep 9-52	"	" " Olav Karlsen
Sep 15-52	"	" " Herbert Wendel
Sep 15-52	"	" " Ezl. Dunwoody
Sep 16-52	"	" " Werner S. Brunn
Sep 10-52	"	" " H. C. Redmann Inc.
Sep 10-52	"	claims of Hafnia Ham Co. Inc. & A/S Dansk Skinkekogeri
Sep 16-52	Memo end re-issuance of amended monition Motion granted on default Ryan J.	
Sep 22-52	Filed	affidavit of mailing
Sep 22-52	"	order extending time to file claims etc to 11-28-52 Ryan J.
Sep 26-52	"	claim of Rudar Glemmestad
Sep 26-52	"	" " Gunvor Ring Galgeberg
Sep 26-52	"	" " Nurd Bourtz
Sep 26-52	"	" " Oion Friks Vestergaard
Sep 26-52	"	" " Marie Helene Johansen
Sep 26-52	"	" " Jan Kauel Slophoom
Sep 26-52	"	" " Albert Olsen
Sep 26-52	"	" " Karsten Bowe
Sep 26-52	"	" " Harald Farstad

Docket Entries

DATE		
Sep	26-52	Filed claim of Arne Folling Eilertsen
Sep	26-52	" " " Martha Berg Aas
Sep	26-52	" " " Leif Olafsen
Sep	26-52	" " " Harold M. Olaussen
Sep	26-52	" " " Andreas Aagaard
Sep	26-52	" " " Kaare B. Blixt
Sep	26-52	" " " Odd Wold Huken
Sep	26-52	" " " Deurne Noord
Sep	26-52	" " " Jore Samset
Sep	26-52	" " " Torlof Hansen
Sep	26-52	" " " Kai Frederick Gundersun
Sep	26-52	" " " Tor J. Hansen
Sep	26-52	" " " Asbjorn Kamphuvg
Sep	26-52	" " " Dom Hugo
Sep	26-52	" " " Leif Oken
Sep	26-52	" " " Cato Voje
(C)		
Sep	26-52	" " " Cato Voje
Sep	26-52	" " " Leif Olsen
Sep	26-52	" " " Gslyarn Jensen
Sep	26-52	" " " Akallej Hansen
Sep	26-52	" Norwegian Seamen's Association, as next friend of the heirs of kin of Egil John Torgersen
Sep	26-52	" Norwegian Seamen's Association, as next friend of the heirs of kin of Rolf Egil Ystenes
Sep	26-52	" Belgian Transport Workers' Union, as next friend and next of kin of Josef Verbeeck
Sep	26-52	" Norwegian Seamen's Association, as next friend of the heirs and next of kin of Ole Kristian Andersen

Docket Entries

DATE		
Sep	26-52	Filed letter re claim of A. Nietvelt
Sep	30-52	" claim of United Fruit Company
Sep	30-52	" answer of Kaare B. Blixt
Sep	30-52	" amended monition with marshals return memo end. proc. made defaults noted
Oct	6-52	" letter and claim of The Montan Transport-Gesellschaft m.b.h. by claim agent George Mueller of Allianz Versicherungs-Aktiengesellschaft, et al.
Oct	3-52	" letter dated 9/27/52 addressed to the US Marshal from Erik Wilberg re: claim of Mrs. Bjorg Andersen.
Oct	8-52	" notice of petitioner's exception to answer of Kaare B. Blixt.
Oct	14-52	" letter from French Chamber of Commerce re claim of Albert Kremper
Oct	20-52	" claim by George Mueller as Claims Agent of the Allianz etc.
Nov	21-52	" Motion Papers to amend order dated Aug 7, 1952 Motion granted
Nov	25-52	Memo end. on motion to amend order dated dated Aug 7, 1952 Motion granted on default I. R. Kaufman J.,
Nov	25-52	Filed order allowing filing of answers nunc pro tunc I. R. Kaufman J.
Nov	28-52	" order amending orders to file proof of claims to 1-28-53 I. R. Kaufman J.
Dec	4-52	" stip. for costs ($250. National Surety Corp.)

Dec	4-52	" answer of Jan A. Driesprong et al.
Dec	29-52	" answer of Olav Karlsen
Jan	8-53	" claim of Wm. S. Febiger Co. and Intercontinental Wool Company

Docket Entries

DATE		
Jan	8-53	Filed claim of United Hat Fur Cutting Company
(D)		
Jan	8-53	" " " Atkinson Haserick & Company
Jan	8-53	" " " S. H. Waldstein Co. Inc.
Jan	8-53	" " " Munro Kincaid Mottla Inc.
Jan	8-53	" " " Cordingley Company
Jan	8-53	" " " Western Diary Products Inc.
Jan	8-53	" " " The Enterprise Manufacturing Company of Pa.
Jan	8-53	" " " Irving M. Sobin Co. Inc.
Jan	8-53	" " " Maryland Trading Corp.
Jan	8-53	" " " Bracht & Co., Inc.
Jan	8-53	" " " Robert S. Fish & Co. Inc.
Jan	8-53	" " " Kreglinger, Inc.
Jan	8-53	" " " Richard M. Ott & Sons, Inc.
Jan	8-53	" " " S K F Industries Inc.
Jan	8-53	" " " Beatty & Hyde, Inc.
Jan	12-53	" " " J M Trading Corp.
Jan	12-53	" " " Federal Liquors Ltd.
Jan	15-53	" " " Anglo Fabrics Co Inc.
Jan	15-53	" " " Nicholson & Company
Jan	16-53	" " " Norge Boats Inc.
Jan	16-53	" " " Robert A Hurley & Co Inc.
Jan	16-53	" " " Jos. Sultan & Sons Inc.
Jan	19-53	" " " Capital Airlines
Jan	19-53	" " " Richard W. Homer & Company
Jan	19-53	" " " Samuel Zeitlin's Sons
Jan	19-53	" " " Franklin & Company
Jan	19-53	" " " Industrial Sales Corporation
Jan	19-53	" answer of Olav Karlsen
Jan	20-53	" claim of Mandel Brothers Inc.

Docket Entries

DATE		
Jan	20-53	Filed claim of I. Reifsnyder Son & Co.
Jan	20-53	" " " Otis McAllister & Co.
Jan	22-53	" " " Monsanto Chemical Co.
Jan	22-53	" " " Frieman Knitwear Corporation.
Jan	22-53	" " " Columbia Export Co. Inc.
Jan	22-53	" " " Schwabach & Company
Jan	22-53	" " " Paul A. Straub & Co. Inc.
Jan	22-53	" " " Marble Supply Corporation of America.
Jan	22-53	" " " A. H. Helmig & Co. Inc.
Jan	22-53	" " " Wool Distributing Corporation.
Jan	22-53	" " " Jos. Rosenthal's Sons Inc
Jan	22-53	" " " Ezl Dunwoody Co.
Jan	22-53	" " " Marum Knitting Mills Inc.
Jan	22-53	" " " Georg Wertheimer
Jan	22-53	" " " Monsanto Chemical Company
Jan	23-53	" " " Browning Chemical Corporation.
Jan	23-53	" " " William Steck & Co. Inc.
Jan	23-53	" notice of motion to extend time to file claims to 3-27-53 ret. 1-27-53
Jan	23-53	" claim of F. Schumacher & Co.
Jan	23-53	" " " Bernard Ulmann Co. Inc.
Jan	23-53	" " " Metasco Inc.
Jan	23-53	" " " Mitropa Corporation
Jan	23-53	" " " George Scheer Co. Inc.
Jan	23-53	" " " Fein & Co. Inc.
Jan	23-53	" " " Imperial International Corp.
Jan	23-53	" " " Parker Machine Co. Inc.
Jan	23-53	" " " Christopher Smiles & Co. Inc.
Jan	23-53	" " " Innis Speiden & Co. Inc.
Jan	23-53	" " " A. L. Erlanger Company Inc.

Docket Entries

DATE					
Jan	23-53	Filed	claim	of	The Baker Castor Oil Company
Jan	23-53	"	"	"	Frank B. Healis & Co Inc.
Jan	26-53	"	"	"	Federated Department Stores Inc., The F. & R. Lazarus & Co. Div.
Jan	26-53	"	"	"	Frederick E. Aubel, Jr, et ano. d/b/u F. & E. Aubel.
Jan	26-53	"	"	"	Fred H. Lenway & Co. Inc.
Jan	26-53	"	"	"	Jacky Maeder & Co.
Jan	26-53	"	"	"	J. Shore & Co.
Jan	26-53	"	"	"	Wool Distributing Corp.
Jan	26-53	"	"	"	W. W. Windle Company.
Jan	26-53	"	"	"	B. S. Bergesen & Jorgen Krag, co-partners d/b/u Frosty Foods Co.
Jan	26-53	"	"	"	Imex S. A.
Jan	26-53	"	"	"	S. Rosenfelder & Son Inc.
Jan	26-53	"	"	"	J. Eisenberg, Inc.
Jan	26-53	"	"	"	Carl M. Loeb, et al d/b/u Carl M. Loeb, Rhoades & Company.
Jan	26-53	"	"	"	H. M. Koenigswerther Inc.
Jan	26-53	"	"	"	Ullmann-Allied Overseas Associates, Ltd.
Jan	26-53	"	"	"	Standard Sales Steel Co. Inc.
Jan	26-53	"	"	"	Miller Products Export Corp.
Jan	27-53	"	"	"	Archer-Daniels-Midland Company
Jan	27-53	"	"	"	Frank A. G.
Jan	27-53	"	"	"	Lador S. A.
Jan	27-53	"	"	"	Andrew Fisher Cycle Co. Inc.
Jan	27-53	"	"	"	D. L. Sterling & Sons
Jan	27-53	"	"	"	Import-Export Industries Inc.

Docket Entries

DATE		
Jan	27-53	Filed claim of Hohenberg Co. Inc.
Jan	27-53	" " " Atlanta Trading Corp.
Jan	27-53	" " " American Express Co.
Jan	27-53	" " " Colonial Mirror & Glass Corp.
Jan	27-53	" " " Merino Wool Corp.
Jan	27-53	" " " Rembert Wurlitzer
Jan	27-53	" " " Garden Supply Sales Corp.
Jan	27-53	" " " Dickersons Overseas Co. etc.
Jan	27-53	" " " Reliance International Mfg. Co.
Jan	28-53	" " " William T. Newbold etc.
Jan	28-53	" " " Kenneth S. Magoon, et al.
Jan	28-53	" " " Firma J. Van Beelen C. V.
Jan	29-53	" " " Modern Exportation
Jan	29-53	" " " American Smelting & Refining Co.
Jan	29-53	" " " Bell Telephone Manufacturing Company S.A.
Jan	29-53	" " " Societe Des Mines Et Fonderies etc.
Jan	29-53	" " " A. Samyn Permandt
Jan	29-53	" " " Union Des Fabriques etc.
Jan	27-53	Memo endorsed on motion papers filed 1/23/53. Granted Conger, J.
Jan	30-53	Filed claim of Ameurope Metals Inc.
Jan	30-53	" " " Stein Hall & Co Inc.
Jan	30-53	" " " Fallani & Cohn Inc.
Jan	30-53	" " " International Expediters Inc.
Jan	30-53	" " " North & Central American Hide Corp.
Jan	30-53	" " " W W Windle Company
Jan	30-53	" " " Gotaas Export Corp.
Feb	5-53	" " " Walter H. Rothschild & Company Inc.

Docket Entries

DATE		
Feb	5-53	Filed claim of A. De Swaan Inc.
Feb	5-53	" " " Ernest Adler Co. Inc.
Feb	5-53	" " " American Overseas Corporation
Feb	5-53	" " " F. H. Taussig
Feb	5-53	" " " Associated Metals & Minerals Corporation
Feb	5-53	" " " O'Neill Brothers Inc.
Feb	5-53	" " " Robt. Jowitt & Sons Ltd.
Feb	5-53	" " " Willich & Company
Feb	5-53	" " " Pohjola Insurance Company
Feb	4-53	" Order extending time to file claims to 3-27-53 etc. Conger J.
Feb	5-53	" claim of the Travelers Fire Ins. Co.
Feb	6-53	" " " " The Atlantic Works
Feb	11-53	" " " " Budde & Westermann
Feb	13-53	" " " " New Amsterdam Import Co. Inc.
Feb	18-53	" claim of D. Benedetto Inc.
Feb	13-53	" " " C. J. Van Houten & Zoon N.V.
Feb	24-53	" " " Stein Hall & Company Inc.
Feb	24-53	" " " Frederick H. Cone & Co. Inc.
Feb	24-53	" " " Delmey Trading Corp.
Mar	3-53	" " " Interstate Casing Corp.
Mar	6-53	" " " Modern Glass & Supply Co.
Mar	12-53	" " " Albert Kremper
Mar	13-53	" " " Switzerland General Ins. Co. Ltd.
Mar	17-53	" " " European Chemical Co. Inc.
Mar	18-53	" " " Mercaderias Peruanas S.A.
Mar	18-53	" " " Meyerhans & Cie. S.A.
Mar	18-53	" " " Etablissements Francois Masurel Freres

Docket Entries

DATE	
Mar 20-53	Filed claim of B N S International Sales Corp.
Mar 20-53	" " " Touraine Flowers Inc.
Mar 20-53	" " " Cosa Corporation
Mar 20-53	" " " Baloise Marine Ins Co. Ltd.
Mar 23-53	" " " W L M Bensdorp Co.
Mar 25-53	" " " N V Tweka Tricotfabrieken
Mar 26-53	" " " United Nations
Mar 26-53	" " " Andels-Svineslagteriet i Kolding
Mar 26-53	" " " Charles Censor
Mar 26-53	" " " Blake & Boyle
Mar 26-53	" " " Garnindustrie G M B H
Mar 26-53	" " " A/S Dansk Kodekstrakt Co Aabenraa
Mar 26-53	" " " Duesberg-Bosson Machines Textiles S P R L
Mar 26-53	" answer " United Fruit Company
Mar 26-53	" answer " American Smelting & Refining Co.
Mar 26-53	Filed stip. for claimant's costs (American Smelting & Refining) $250. Indem. Ins. Co. of North America
July 17-53	Filed affdvt & show cause order—Wurttembergische und Badische, etc. may file claim nunc pro tunc as of 3-27-53 & to file answer pet'n nunc pro tunc, etc.—Memo endorsed—Granted—no opposition—settle order—Weinfeld, J.
July 21-53	Filed affdvt. & notice of motion—Permit M. A. Verbeeck, et al. to file claim nunc pro tunc, etc.—ret. 7-28-53.
July 23-53	Filed order permitting Wurttembergische und Badische etc. to file claim nunc pro tunc as of 3-27-53 at 10:00 A.M., etc.—Weinfeld, J.

Docket Entries

DATE	
July 23-53	Filed note of issue for trial.
July 28-53	Memo endorsed on motion of 7-21-53—Granted on default—Dimock, J.
July 30-53	Filed Answer of Wurtembergische und Badische Vereinigte, etc.
July 30-53	Filed stip. for claimant's costs, $250., Indem. Ins. Co. of N. Amer.
Aug. 3-53	Filed Order permitting Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck, Claimants, to file claim nunc pro tunc 9/30/52 at 10 o'clock A.M. Dimock, J.
Aug. 5-53	Filed stip. for costs ($250. Indem. Ins. Co. of N.A.)
Aug. 5-53	Filed answer of Maria Angelina Verbeeck, et al.
Dec. 30-53	Filed notice of change of firm name.
Feb. 2-54	Filed letter dated 1/20/54 from Jakob E. Gelting re withdrawal of claim of Hafnia Ham Co. Inc., and A/S Dansk Skinkekogeri, Copenhagen.
July 30-54	Filed interrogs.
Aug. 18-54	Filed notice of taking deposition of Mr. and Mrs. Thomas D. Leeson.
Sept. 2-54	Filed interrogs. propounded to petitioner by cargo claimants, etc.
Sept. 23-54	Filed answers to interrogatories (American Smelting & Refining Co., et al.)
Oct. 1-54	Filed exceptions to answers to interrogatories.
Dec. 30-54	Filed consent and order substituting Thomas H. Walker as proctor for United Fruit in place of Eugene F. Russell, Jr. Clerk.

Docket Entries

DATE	
Jan. 3-55	Filed notice of motion re: to permit Black Diamond S.S. Corp. to file its claim. Ret. 1/11/55.
Dec. 23-54	Filed exceptions and objections of petitioner Skibs A/S Jolund to answers of claimants to interrogs. Ret. 1/11/55.
Jan. 11-55	Memo endorsed on motion papers filed 1/3/55. Motion granted. Palmieri, J.
Jan. 18-55	Filed notice of pre-trial hearing. Memo end. 1/17/55. Place this case at the pre-trial calendar for a conference before me on 1/31/55. Knox, Ch. J.
Jan. 19-55	Filed order permitting claim of Black Diamond SS Corp to be filed nunc pro tunc as of March 26, 1953 within 20 days after signing of this order. Palmieri, J.
Jan. 25-55	Memo. endorsed on notice of motion filed 12/23/54. "Motion disposed of as indicated upon argument. Submit order." Bicks, J.
Jan. 26-55	Filed petitioner's interrogatories, answers and exceptions.
Jan. 28-55	Filed Notice of Claim of Black Diamond S.S. Corp.
Jan. 31-55	On call of pre-trial before, Knox, Ch. J. Hearing adjd. to 2/14/55
Feb. 24-55	Filed consent & order sustaining exceptions of petition to answers of American Smelting & Refining Co., et al. claimants, to petitioner's interrogs; order that claimants Amer. Smelting & Ref. Co. file answers to petitioner's interrogs as indicated, etc. Bicks, J.
Feb. 14-55	On call of pre-trial before, Knox, Ch. J. Hearing adjd to 3/17/55

Docket Entries

DATE	
Mar. 11-55	Filed supplemental answers to certain interrogs. (American Smelting & Refining Co. and other claimants, etc.)
Mar. 17-55	On call of pre-trial before Knox, Ch. J. Marked off pre-trial calendar.
Apr. 22-55	Filed affidavit of adjournment.
Aug. 29-55	Filed notice of non-readiness for trial
Aug. 29-55	Filed notice of non-readiness for trial
Aug. 30-55	Filed notice of non-readiness for trial
Aug. 31-55	Filed notice of readiness for trial
Sep. 1-55	Filed notice of non-readiness for trial
Dec. 29-55	Filed notice of motion to revoke calendar dispositions etc. Memo. endorsed. Motion granted as indicated. Weinfeld, J. (Also in A 178-342, A 178-370 and A 178-380)
Dec. 29-55	Filed affidavit and order revoking calendar dispositions etc. Weinfeld, J. (Also in A 178-342, A 178-370 & A 178-380)
Dec. 29-55	Filed affidavit of Daniel L. Stonebridge. (Also in A 178-342, A 178-370 and A 178-380)
Jan. 13-56	Filed Notice of Readiness for Trial.
Feb. 7-56	Filed Notice of change of firm name to Pyne, Brush, Smith & Michelsen from Pyne Lynch & Smith.
Feb. 6-56	Before Dimock, J. Trial begun. (Consolidated for trial with A178-342, 178-370 & A178-380).
Feb. 7-56	Trial continued.
Feb. 8-56	" " . Libelant and Passenger claimant rest.
Feb. 9th, 14th, 15th, 16th, 17th, 21st, 23rd, 24th, 27th.	Trial continued.
Feb. 28-56	Trial concluded. Decision reserved.

Docket Entries

DATE	
Mar. 22-56	Filed Record of Proceedings of Feb. 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27, 28, 1956. (Filed in A178-342).
May 16-56	Filed Opinion #22617. Dimock, J. Petition for exoneration granted and libelants recovery denied. (Also in A178-370, A178-342 & A178-380).
May 25-56	Filed notice of motion re: to strike and delete as indicated. Ret. 5/29/56. (Also in A178-370, A178-342 and A178-380)
May 29-56	Memo end. on motion papers filed 5/25/56. This motion is respectfully referred to Judge Dimock at the request of counsel. Palmieri, J.
July 18-56	Filed amended memorandum (Opinion #22,813) Dimock, J. (Also in A 178-370, A 178-342 and A 178-380)
July 23-56	Filed second amended memorandum (Opinion #22,829) Dimock, J. (Also in A 178-370, A 178-342 and A 178-380)
July 27-56	Filed proposed findings of fact and conclusions of law with memo. endorsed "Disposed of as indicated on the margins" Dimock, J.
July 27-56	Filed petitioner's amended proposed findings and conclusions with memo. endorsed. "Disposed of as indicated on the margins" Dimock, J.
July 27-56	Filed proposed findings of fact and conclusions of law. Memo. endorsed. "Disposed of as indicated on the margins" Dimock, J.
July 27-56	Filed proposed findings of fact and conclusions of law. Memo. endorsed. "Disposed of as indicated on the margins" Dimock, J.

Docket Entries

DATE	
Oct. 4-56	Filed consent order for Findings of Fact and Conclusions of Law. Dimock, J. (Also in A.178-342. A.178-370. A.178-380)
Nov. 27-56	Filed ad interim stip. ($218,563. Assuranceforeningen Gard)
Nov. 27-56	Filed taxed bill of costs $2602.25. Clerk.
Nov. 28-56	Filed final decree of exoneration, petitioner to recover costs as taxed in sum of $2,602.25 from claimants listed in schedule attached. Dimock, J.
Dec. 14-56	Filed notice of appeal. Mailed copy to attorney 12-14-56.
Dec. 14-56	Filed assignments of error.
Dec. 14-56	Filed Bond underaking costs on appeal ($250. Ind. Ins. Co. of N.A.)
Dec. 19-56	Filed Notice of Appeal.

Petition of Skibs A/S Jolund, as Owner of the Motor Ship "Black Gull", for Exoneration and/or Limitation of Liability

(1501)

To the Honorable the Judges of the United States District Court for the Southern District of New York

The petition of Skibs A/S Jolund, as owner of the motor ship "Black Gull", in a cause of exoneration from and limitation of liability for damages arising out of a fire on board the "Black Gull" on July 18, 1952, respectfully alleges on information and belief:

First: Skibs A/S Jolund petitioner now is and at all times herein mentioned was a Norwegian limited company or corporation with an office and place of business in Oslo, Norway, and is and at all times herein mentioned was the owner of the motor ship "Black Gull" hereinafter mentioned.

Second: The motor ship "Black Gull" is and at the time of the filing of this petition and the stipulation for costs herein, and the ad interim stipulation for value of the motor ship "Black Gull" herein will be within the jurisdiction of the United States and of this Honorable Court.

Third: The petitioner herein used due diligence to make the said motor ship "Black Gull" seaworthy, and the said vessel at all times herein mentioned was strong, staunch, tight and seaworthy, and in all respects fully and properly manned and equipped.

Fourth: The said motor ship "Black Gull" is and at all times herein mentioned was registered and operated

under the Norwegian flag as a cargo vessel of 4,929.33 tons gross register and 2,846 16 tons net register.

(1502)

Fifth: Prior to and at the commencement of the voyage hereafter described the petitioner used due diligence to make the said vessel seaworthy, and until the accident hereinafter mentioned she was tight, staunch, strong, fully manned, equipped and supplied, and in all respects seaworthy and fit for the service in which she was engaged and for the cargo which was ladened aboard her.

Sixth: On July 18, 1952 the motor vessel "Black Gull" was proceeding on a voyage from Rotterdam to New York. On the evening of that day and while the vessel was approximately sixty-five miles off Montauk Point a fire of undetermined origin was discovered in part of the deck cargo on board the "Black Gull". Prompt and efficient measures were immediately taken by the officers and crew of the vessel to extinguish the fire, and an SOS call was sent out. Despite the measures taken to extinguish the fire it spread rapidly so that it was finally necessary for those on board the "Black Gull" to abandon ship, and as a result of the fire the vessel became a constructive total loss with her equipment and cargo. The amount of damage to and loss of property, and of injuries and deaths which may have occurred as a result of such fire are at present not calculable.

Seventh: The losses, damages and destruction sustained by the "Black Gull", her crew and cargo, and by any and all other persons and property as may have resulted from the fire on the "Black Gull" were not caused

or contributed to by any fault, negligence or want of care on the part of the "Black Gull" or those in charge of her, the petitioner herein, or any one for whom the petitioner may be responsible, but resulted from a cause that could not (1503) have been avoided by such persons in the exercise of due care.

Eighth: The loss of cargo aboard the "Black Gull" as a result of said fire was occasioned and incurred without the design or neglect of the petitioner, and any and all damage or loss resulting therefrom occurred without any privity, knowledge or fault of the petitioner, or any one for whom petitioner was or is responsible, and without any fault, neglect or want of care on the part of the motor ship "Black Gull", or of any agent, servant, or employee of petitioner.

Ninth: Petitioner claims exoneration from liability for any and all loss or damage occasioned or incurred by reason of the matters aforesaid, and for any and all claims alleged or asserted against it, and petitioner alleges that it has a valid defense in law and upon the merits to any such claims.

Tenth: Petitioner in the event liability is decreed against it, or against the motor ship "Black Gull" claims the benefits of Sections 4283 et seq. of the Revised Statutes of the United States and the various Acts of Congress amendatory thereof and supplemental thereto, and to that end petitioner is ready and willing and hereby offers and agrees to give a stipulation with sufficient surety for the payment into court of the amount or value of the interest of the petitioner in said "Black Gull" whenever this Court shall order pursuant to the aforesaid statutes, general rules in admiralty and the rules of this Court.

Petition of Skibs A/S Jolund, as Owner of the Motor Ship "Black Gull", for Exoneration and/or Limitation of Liability

Eleventh: As appears from the annexed affidavits of Frank S. Martin, verified the 4th day of August, (1504) 1952, and of William M. Finkenauer, verified the 4th day of August, 1952 the said vessel as a result of the fire was a constructive total loss and in her damaged condition at the termination of her voyage had a value of not to exceed $140,000, and the pending freight prepaid and due for the entire voyage was $78,563. For purposes of bonding and security petitioner offers and files herein a stipulation for value in an amount which includes the value of the vessel in damaged condition as well as the entire freight aforesaid of $78,563.

Twelfth: As a result of the matters aforesaid various claims have been or may be made, and suits may be brought against the petitioner and against the motor ship "Black Gull". The amount of such claims can not at present be calculated, but the petitioner believes that they will be greatly in excess of the value remaining in the motor ship "Black Gull" and her pending freight.

Thirteenth: There are no demands or unsatisfied liens or claims against the said motor ship "Black Gull" of which your petitioner has any knowledge or notice, and the only suit pending against the said vessel or petitioner by reason of the fire is one in the United States District Court for the Southern District of New York for $10,000 filed by Stein, Hall & Co. Inc., for loss of a cargo of German burlap. The proctors or attorneys for the said claimant Stein, Hall & Co., Inc. are Bigham, Englar, Jones & Houston of 99 John Street, New York City. There were no claims pending against the said vessel at and prior to the time of the fire and damages or alleged damages which occurred on July 18, 1952 as hereinbefore described.

Petition of Skibs A/S Jolund, as Owner of the Motor Ship "Black Gull", for Exoneration and/or Limitation of Liability

Fourteenth: All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

(1505)

WHEREFORE, your petitioner prays:

That this court will cause due appraisement to be made of the amount or value of petitioner's interest in the said motor ship "Black Gull" and pending freight at the time of the aforesaid fire.

That this court make an order directing the petitioner to file a stipulation with surety to be approved by the court for payment in court of the amount of petitioner's interest whenever the court shall so order.

That this court make an order directing the issuance of a monition to all persons claiming damages for any and all loss, damage or injury caused by or resulting from the occurrences aforesaid, citing them to appear before the court in said order, and make due proof of their respective claims, and also to answer the allegations of this petition according to law and the practice of this court on or before a certain time to be fixed by said order.

That this court make an order directing that on the giving of such stipulation as may be determined to be proper, or of an ad interim stipulation, an injunction shall issue restraining the prosecution of any suits or proceedings already begun to recover damages arising out of occurrences hereinabove described, and the commencement and prosecution of any suit, action or legal proceeding of any nature or description whatsoever, except in the present proceeding and against the petitioner in respect to any claim or claims arising therefrom.

Petition of Skibs A/S Jolund, as Owner of the Motor Ship "Black Gull", for Exoneration and/or Limitation of Liability

That this court in this proceeding will adjudge that the petitioner is not liable to any extent for any loss, damage or injury, nor for any claim whatsoever in any way arising out of or in consequence of the occurrences herein- (1506) above described, or if the petitioner shall be adjudged liable that then its liability be limited to the amount or value of petitioner's interest in the motor ship "Black Gull" and pending freight at the termination of the voyage on which she was engaged at the time of the occurrence aforesaid, and that the moneys paid or secured to be paid as aforesaid be divided pro rata among such claimants as may duly prove their claims before the commissioner hereinbefore named saving to all parties any priorities to which they may be legally entitled, and that a decree may be entered discharging the petitioner from all further liability.

That the petitioner may have such other or further relief as the justice of the cause may require.

PYNE, LYNCH & SMITH
Proctors for Petitioner
116 John Street
New York 38, N. Y.

(Verified August 4, 1952.)

Order Amending Petition

(1522)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A 174–34

In the Matter of the Petition of

SKIBS A/S JOLUND

as owner of the motor ship "Black Gull", in a cause of exoneration from and limitation of liability for damages arising in consequence of a fire on said vessel on and after July 18, 1952.

Upon the annexed affidavit of Anthony V. Lynch, Jr., sworn to August 20, 1952, and on the petition filed herein August 7, 1952, and the order of this court of the same day directing, among other matters, the issuance and publication of a monition;

Now, on motion of Pyne, Lynch & Smith, proctors for the petitioner, it is

ORDERED, that paragraphs Twelfth and Thirteenth of the petition be and they hereby are amended so as to read as follows:

"Twelfth: As a result of the fire and matters aforesaid numerous claims may be made, and suits brought against the said motor ship 'Black Gull' and the petitioner. One such suit in admiralty has already been brought, as hereinafter stated. The number of such claims or suits, and the amounts involved or the damages which may be alleged there-

in, are at present unknown and can not be estimated, but petitioner believes that they will greatly exceed the value of the motor ship 'Black Gull' and her pending freight. Such claims and possible suits thereon, to the best of petitioner's knowledge and belief, are as follows:

A suit in admiralty has been brought in this court on the libel of Stein, Hall & Co., Inc., of 285 Madison Avenue, New York City, against the motor ship 'Black Gull', and against the petitioner and others, to recover damages alleged in the libel in the sum of $10,000, said to have been (1523) sustained to a cargo of German burlap. Bigham, Englar, Jones & Houston, Esqs., of 99 John Street, New York 38, N. Y., are proctors for the libellant in the said suit. Owners, shippers, or consignees of other cargo on board said vessel and damaged or lost as a result of the fire and matters aforesaid, may also have and present claims, or bring suits; but the names and addresses of such other possible cargo claimants, and whether or not they are represented by attorneys, or the amount of their alleged damages, the petitioner does not now know, save and except that said Bigham, Englar, Jones & Houston, Esqs., have stated that they represent underwriters on cargo other than that involved in the libel filed by them on behalf of Stein, Hall & Co., Inc., and that they may make claim or bring suit on behalf of the owners or underwriters of such other damaged or lost cargo.

Merritt-Chapman & Scott Corporation, of 17 Battery Place, New York City, was engaged on July 19th, 1952 under a 'No Cure—No Pay' contract to send assistance to the said motor ship 'Black Gull', then on fire at sea, and to endeavor to save

the said vessel, cargo and freight, the amount of compensation for such services to be left to later determination; and pursuant to said agreement said Merritt-Chapman & Scott Corporation did render such assistance including towage of the remains of the vessel and cargo to the Port of New York. In so far as your petitioner is informed, no attorneys represent said salvor.

Petitioner is informed and believes that four members of the crew of said motor ship 'Black Gull' were missing as a result of the fire and matters aforesaid, and that after the arrival of the remains of the vessel at the Port of New York four bodies, so charred or burned as to be unidentifiable, were found on board the wreck, and are believed to be the bodies of the four missing members of the crew.

The names of the said four missing and presumed deceased members of the crew, and the names and addresses of their next-of-kin, to the best of petitioner's knowledge, are as follows:

Egil Torgersen, repairman, whose next-of-kin is Ingfrid Torgersen, of Ingersgat 29, Fredrikstad, Norway; Ole Andersen, motorman, whose next-of-kin is Bjoerg Andersen, of Aalestranden, Fredrikstad, Norway; Rold Ystenes, motorman, whose next-of-kin is Lilli Hansen, of Wesselsgate 29, Kristiansund N, Norway; and Josef Verbeeck, mess boy, whose (1524) next-of-kin is Maria Verbeeck, of Heuvelstratt 57, Boechout, near Antwerp, Belgium. In so far as petitioner is informed, no claims have been presented on behalf of any of the aforesaid deceased or their estates or next-of-kin, nor are any of them represented by an attorney.

There were nine passengers on board the said

motor ship 'Black Gull' at the time of the fire and matters aforesaid, all of whom have made claim for loss of personal effects, and four of whom have stated they sustained injury and these four may make claim for such injuries. To the best of petitioner's knowledge the names and addresses of said passengers, and the amount of the claims presented for loss of personal effects, and those who have stated that they sustained injury, and who therefore may make claim for amounts for injury, are as follows: Jacobus de Nobel, of Schalkwijkerstraat 45, Haarlem, Holland, who has made claim of $549 for loss of personal effects, and has stated he sustained injuries; Pieter Spaanderman, of Van Dalenlaan 47, Santpoort, Holland, who has made claim of $747 for loss of personal effects, and has stated he sustained injuries; Thomas D. Leeson and Jeanne Leeson, care of Major Francis R. MacDonald, 2107 Woodbourne Avenue, Louisville 5, Kentucky, who have made claim of $1750 for loss of personal effects, and have stated they sustained injuries; Jurg Furger, care of Mr. Louis R. Sartorius, International B. F. Goodrich Co., 230 Park Avenue, New York, N. Y., who has made claim of $527.50 for loss of personal effects; Jan Peter Mueller, care of Tobacco Merchants Corporation, 20 Exchange Place, New York 5, N. Y., who has made claim of $792 for loss of personal effects; Jan A. Dreisprong and Janna Dreisprong, and Wilhelmina Dreisprong, care of M. Van Hof, 122 Vernon Avenue, Newport, R. I., who have made claim of $2929.50 for loss of personal effects. None of the aforesaid passengers to petitioner's knowledge are represented by attorneys, save and except that Abberley, Kooiman & Amon, Esqs., attorneys at

law, of 55 Liberty Street, New York 5, N. Y. have stated that they represent Jan A. Dreisprong, Janna Dreisprong, and Wilhelmina Dreisprong.

1525)

Petitioner is informed that the third mate of the vessel, Nils Valen, whose home address is Haugesund, Norway, suffered burns, and that he was taken on board the steamship 'Gripsholm' from the scene of the fire to Europe; but in so far as petitioner is informed said Nils Valen has not up to the present time made any claim, nor is he represented by an attorney.

Petitioner is informed that Olav Karlsen, whose home address is unknown to petitioner, a member of the crew of the 'Black Gull' in the capacity of ordinary seaman, sustained injuries which resulted in hospitalization at the U. S. Marine Hospital, Stapleton, Staten Island, where he is now believed to be a patient. Herman Cooper, Esq., an attorney, of 225 Broadway, New York, N. Y., has written the charterer of the vessel, Black Diamond Steamship Corporation, stating that he represents said Olav Karlsen, who has a claim for personal injuries and maintenance, but no amount has thus far been stated for said claims.

Petitioner is informed that several other members of the crew of the said vessel may have sustained injuries which petitioner believes to have been minor, but which members of the crew, or the nature and extent of their injuries, petitioner does not now know, nor have any of them made any claim, nor has any attorney appeared on behalf of any of them, save and except as aforesaid; and save and except also that Jacob Rassner, Esq., an

attorney, of 220 Broadway, New York 38, N. Y., under date of July 24th, 1952 wrote Black Diamond Steamship Corporation stating he had been 'retained as attorney for the crew members of the S/S "Black Gull", without naming any particular member of the crew, and without making claim or demand on behalf of any or either of them or stating the nature or amount of any claim existing.

Thirteenth: There are no demands or unsatisfied liens or claims against said motor ship 'Black Gull' of which your petitioner has any knowledge or notice, save and except the claim of Merritt-Chapman & Scott Corporation for salvage, and the other claims or possible claims referred to in foregoing paragraph Twelfth hereof. There were no claims pending against the said vessel at and prior to the time of the fire and damages or alleged damages which occurred on or about July 18th, 1952, as hereinbefore described."

and it is further

Ordered, that the order of this court of August 7, 1952 directing the issuance of a monition and the filing of claims with the Clerk of this Court, and the monition issued thereunder be and the same hereby are amended so as to order and direct that all persons claiming damages for (1526) any and all losses or damages arising out of or consequent upon the fire which occurred on the motor ship "Black Gull" on July 18, 1952, and all persons having any claim against the said motor ship and pending freight appear before this court and file proof of their respective claims under oath with the clerk of this court on or before September 30, 1952 at 10 o'clock in the forenoon of that day; and be it further

Order Amending Petition

ORDERED, that except as hereinbefore amended the petition and all orders heretofore made herein and the monition be and the same remain in full force and effect as herein amended.

Dated New York, N. Y., August 21, 1952.

Sd. DAVID V. EDELSTEIN
United States District Judge

Affidavit of Anthony V. Lynch, Jr.

(1527)

[SAME TITLE]

State of New York,
County of New York—ss.:

ANTHONY V. LYNCH, JR., being duly sworn, deposes and says:

I am a member of the firm of Pyne, Lynch & Smith, proctors for the petitioner in the above entitled proceedings.

The petition herein for exoneration from and limitation of liability was verified by deponent, as proctor for the petitioner; and filed in this court on August 7th, 1952, and under the same date this court made an order directing, among other things, the issuance of a monition requiring that proof of all claims be filed with the Clerk of this court on or before September 16th, 1952 at 10 a. m., and that public notice of the monition be given by publication

in the New York Law Journal once a week for four consecutive weeks.

Such publication was commenced on Monday, August 11th, 1952, and the second publication of the notice (1528) has been made on Monday, August 18th, 1952. No claims or appearances, and no answers to the petition have as yet been filed by or on behalf of any party. Because of information acquired by deponent subsequent to the verification and filing of the petition, deponent believes it necessary and desirable to amend two paragraphs of the petition which refer to the possible claims or suits, and also to amend the order for monition and its publication so as to extend the time for filing of claims and for giving notice to claimants or possible claimants, and again commence publication for the four week period.

Since the aforesaid verification and filing of the petition, deponent has learned that there then was a claim pending or lien against the said motor ship "Black Gull" to wit, a claim and lien of Merritt-Chapman & Scott Corporation for salvage services rendered to the "Black Gull" and her cargo and freight in connection with the fire in question. Also further details are now known concerning claims or possible claims of passengers and members of the crew for loss of personal effects or personal injury, of owners, shippers or consignees of cargo, and of possible claims of next-of-kin of for deceased members of the crew. All these matters are covered as fully as is now reasonably proper and necessary in a proposed amendment of paragraphs Twelfth and Thirteenth of the petition the form and content of which are set forth in Schedule A hereto attached. Deponent desires and prays that the proposed attached form and content of paragraph Twelfth and Thirteenth of the petition be substituted in place and stead of paragraphs of the original petition.

Affidavit of Anthony V. Lynch, Jr.

(1529)

The order of this court of August 7th, 1952 directing the issuance of the monition provided for the four weeks publication once a week required under Supreme Court Admiralty Rule 51, and as previously stated for the filing of claims by September 16th, 1952 at 10 a. m. To afford opportunity for the publication and mailing of the notice required by the same rule to be made not later than the second day of publication, it is now also respectfully requested that the said order and the monition issued thereunder be amended so as to require the filing of claims on or before September 30th, 1952 at 10:00 o'clock in the forenoon of that day.

Wherefore deponent prays that an order be made herein that the petition order for the issuance of the monition and publication of notice thereof, and the monition, be amended in accordance with the foregoing.

Anthony V. Lynch, Jr.

(Sworn to August 20, 1952.)

SCHEDULE A, ANNEXED TO AFFIDAVIT OF ANTHONY V. LYNCH, JR.

(1530)

Proposed Form and Content of Paragraphs Twelfth and Thirteenth of the Petition as Amended:

[Same as set out in foregoing order]

Claim of American Smelting & Refining Co.

(2152)

[SAME TITLE]

CLAIM OF AMERICAN SMELTING & REFINING CO.
FOR $26,500.00

The above named claimant hereby appears in this proceeding and makes claim against petitioner, Skibs A/S Jolund, and against the M. S. "Black Gull", and her proceeds, as follows:

First: At all the times hereinafter mentioned claimant was, and now is, an individual, co-partnership, corporation, or other legal entity, as described on Schedule "A" hereto annexed, with, in the case of an individual, a place of residence, and in the cases of co-partnerships and corporations, a place of business, at the address set forth on said schedule.

Second: At all said times petitioner, Skibs A/S Jolund, was, and now is, a Norwegian limited company or corporation, and was at all said times the owner of the M. S. "Black Gull".

Third: At all said times the M. S. "Black Gull" was a general ship engaged in the common carriage of merchandise on the high seas for hire, between the ports of Bremen, Hamburg, Rotterdam and Antwerp, and the ports of Boston, New York and Philadelphia.

Fourth: During the months of June and July, 1952, the shippers whose names are set out on Schedule "A" hereto annexed, delivered to petitioner and other car-

riers as common carriers at the ports of shipment set out on Schedule "A" hereto annexed, the shipments of merchandise described on said schedule, in good order and condition, for transportation by petitioner and said other carriers on the said motorship, from the said ports of shipment to the ports of destination set out on said schedule, and delivery there, in like good order and condition as when shipped, to the consignees named on said schedule, in consideration of certain agreed freights, and in accordance with the valid terms of certain bills of lading signed and delivered to said (2153) shippers at said ports of shipment by duly authorized agents of petitioner and said other carriers and of the M. S. "Black Gull".

Fifth: Thereafter said shipments, still in good order and condition, were shipped and placed on board the M. S. "Black Gull" by petitioner and said other carriers; and thereafter the said vessel having the said shipments on board, sailed from the ports of shipment named in Schedule "A" annexed hereto, and thereafter arrived at the port of New York in tow. The shipments described on Schedule "A" either have not been delivered at all to the persons entitled thereto, or have been delivered to them short, slack and seriously injured and damaged; and such parts of said shipments as have been delivered were, at time of delivery, subject to alleged liens for salvage and other charges not contracted for in the said bills of lading. In addition, the persons entitled to delivery were obliged to incur, and did incur, heavy expense to obtain delivery of such portions of said shipments as were delivered.

Sixth: Prior to the arrival of the M. S. "Black Gull" at New York, and prior to filing of this claim, claimant became for value the owner and holder of said bills of

lading, and the owner of said shipments and entitled to delivery thereof, in accordance with the terms of the contracts of carriage. Claimant files this claim on its own behalf, and on behalf of all others who may ultimately prove to be interested in said shipments, as their respective interests may ultimately appear.

Seventh: Claimant and its predecessors in title and in interest, and those on whose behalf this claim is filed, have duly performed all the terms and condition of the contracts of carriage on their respective parts to be performed.

Eighth: By reason of the premises, claimant and those on whose behalf this claim is filed have suffered and sustained damages in the sum set out on page "1" of this claim and on Schedule "A" hereto annexed, as nearly as the same can now be estimated, no part of which sum has been paid, although duly demanded.

Ninth: This claim accrued on July 18, 1952.

Tenth: All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, claimant prays that this claim be approved and allowed by the Court, with interest and costs, and that claimant may have such other and further relief as in law and justice claimant may be entitled to receive.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Claimant.

(Verified January 27, 1953.)

SCHEDULE "A", ANNEXED TO CLAIM OF AMERICAN SMELTING & REFINING COMPANY

(2154)

CLAIMANT: American Smelting & Refining Co.

STATUS: Corporation organized according to law.

PLACE OF BUSINESS: 120 Broadway, New York, N. Y.

SHIPPER: Mining Equipment Corp.

PORT OF SHIPMENT: Rotterdam

BILL OF LADING NO.: 30

DESCRIPTION OF MERCHANDISE: 645 ingots of Tin-Alloy of which Tin is the component of chief value.

CONSIGNEE: Order of American Smelting & Refining Co., notify same.

PORT OF DESTINATION: New York

AMOUNT OF DAMAGES: $26,500.00.

Answer of Claimants American Smelting & Refining Company, et al., to the Petition of Skibs A/S Jolund as Owner of the Motorship "Black Gull" as Amended

(2392)

To the Honorable the Judges of the United States District Court for the Southern District of New York

The answer of American Smelting & Refining Company and of all of the other claimants whose names are set out on Schedule "A" hereto annexed to the petition of Skibs A/S Jolund as owner of the Motorship "Black Gull" as amended, in a cause of exoneration from and limitation of liability, alleges and respectfully shows to this Honorable Court, upon information and belief, as follows:

First: Claimants have heretofore filed their claims herein under oath.

Second: Claimants admit the allegations of the First Article of the Petition.

Third: Claimants admit the allegation of the Second Article of the Petition.

Fourth: Claimants deny the allegations of the Third Article of the Petition.

Fifth: Claimants admit that at the times mentioned in the Petition, the motorship "Black Gull" was registered and operated under the Norwegian flag as a cargo vessel and deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Fourth Article of the Petition.

Answer of Claimants American Smelting & Refining Company, et al., to the Petition of Skibs A/S Jolund as Owner of the Motorship "Black Gull" as Amended

Sixth: Claimants deny the allegations of the Fifth Article of the Petition.

Seventh: Claimants admit that on July 18, 1952, the motor vessel, the "Black Gull" was proceeding on a voyage from Rotterdam to New York. They further admit that said vessel, (2393) before the termination of said voyage, became a constructive total loss with her equipment and most of her cargo. They further admit that the amount of damage to and loss of property and of injuries and deaths which may have occurred in the course of the said voyage are not at present calculable. They deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Sixth Article of the Petition.

Eighth: Claimants deny the allegations of the Seventh Article of the Petition.

Ninth: Claimants deny the allegations of the Eighth Article of the Petition.

Tenth: Claimants deny that petitioner has valid defenses in law and of upon the merits to their claims, and deny the remaining allegations of the Ninth Article of the Petition.

Eleventh: The Tenth Article of the Petition constitutes merely a statement of purpose, and claimants are not required to answer it.

Twelfth: Claimants deny that they have any knowledge or information sufficient to form a belief as to the allegations of the Eleventh Article of the Petition.

Answer of Claimants American Smelting & Refining Company, et al., to the Petition of Skibs A/S Jolund as Owner of the Motorship "Black Gull" as Amended

Thirteenth: Claimants admit the allegations of the first two paragraphs of the Twelfth Article of the Petition, as amended, and deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Twelfth Article of the Petition, as amended.

Fourteenth: Claimants deny that they have any knowledge or information sufficient to form a belief as to the allegations (2394) of the Thirteenth Article of the Petition, as amended.

Fifteenth: Claimants admit that the premises alleged in the Petition are within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court and deny the remaining allegations of the Fourteenth Article of the Petition.

Wherefore Claimants pray that their claims heretofore filed herein be allowed, with interest and costs; that the Petition herein be denied and dismissed; and that they may have such other and further and different relief as in law and justice they may be entitled to receive.

Bigham, Englar, Jones & Houston
Proctors for Libellants
Office & P. O. Address
99 John Street
New York 38, N. Y.

(Verified March 25, 1953.)

SCHEDULE "A", ANNEXED TO ANSWER OF AMERICAN SMELTING & REFINING COMPANY

(2396)

LIST OF CLAIMANTS IN ADDITION TO AMERICAN SMELTING & REFINING COMPANY ON WHOSE BEHALF THE FOREGOING ANSWER IS FILED

Atkinson Haserick & Co.

Anglo Fabrics Company, Inc.

Frederick E. Aubel, Jr. & Frederick E. Aubel, III, copartners doing business under the firm name of F. & E. Aubel.

Olaf Ravndal as treasurer of American Express Company, an unincorporated association of more than 7 persons.

Atalanta Trading Corporation.

Archer-Daniels-Midland Company

Ameurope Metals, Inc.

Ernest Adler Co., Inc.

American Overocean Corporation.

Associated Metals & Minerals Corporation.

Stanley Wallach doing business as The Atlantic Works.

Beatty & Hyde, Inc.

Bracht & Co., Inc.

The Baker Castor Oil Company

Browning Chemical Corporation

Bell Telephone Manufacturing Company, S. A.

Budde & Westerman

Schedule "A", Annexed to Answer of American Smelting & Refining Company

D. Benedetto, Inc.

Baloise Marine Insurance Company, Ltd.

Cordingley Company

Capital Airlines

Columbia Export Co., Inc.

Colonial Mirror & Glass Corp.

Frederick H. Cone & Co., Inc.

Cosa Corporation

Ezl. Dunwoody Co.

Dickerson's Overseas Company, a Division of the Dickerson Company, Inc.

(2397)

A. de Swaan, Inc.

Delmey Trading Corporation

The Enterprise Manufacturing Company of Pennsylvania

A. L. Erlanger Co., Inc.

J. Eisenberg, Inc.

European Chemical Co., Inc.

Wm. S. Febiger Co. & Intercontinental Wool Co.

Robert S. Fish & Co., Inc.

Federal Liquors, Ltd.

Lewis C. Franklin & Lewis C. Franklin, Jr. co-partners doing business under the firm name and style of Franklin & Co.

Frieman Knitwear Corporation

Schedule "A", Annexed to Answer of American Smelting & Refining Company

Federated Department Stores, Inc. The F. & R. Lazarus & Company, Div.

Fein & Co., Inc.

B. S. Bergensen & Jorgen Krag, co-partners doing business under the firm name and style of Frosty Foods Company.

Frank A. G.

Andrew Fisher Cycle Co., Inc.

Fallani & Cohn Co., Inc.

Garden Supply Sales Corporation.

Gotaas Export Corporation

Robert A. Hurley & Co., Inc.

Richard W. Homer doing business under the firm name and style of Richard W. Homer Company.

A. H. Helmig & Co., Inc.

Frank B. Healis & Co., Inc.

Hohenberg Co., Inc.

Industrial Sales Corporation

Innis Speiden & Co., Inc.

Imperial International Corporation

(2?98)

Imex S. A.

Import-Export Industries, Inc.

International Expediters, Inc.

Interstate Casing Corporation

Schedule "A", Annexed to Answer of American Smelting & Refining Company

J. M. Trading Corporation

Jacky Maeder & Co.

Robt. Jowitt & Sons, Ltd.

Kreglinger, Inc.

H. M. Koeningswerther, Inc.

Albert Kremper

Fred H. Lenway & Co., Inc.

Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish II, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Hebert Higgins, and Samuel L. Stedman, co-partners doing business under the firm name and style of Carl M. Loeb Rhoades & Company.

Lador S. A.

Maryland Trading Corporation

Munro Kincaid Mottla, Inc.

Mandel Brothers, Inc.

Marble Supply Corporation of America

Monsanto Chemical Co.

Marum Knitting Mills, Inc.

Metasco, Inc.

Mitropa Corporation

Miller Products Export Corporation.

Merino Wool Corporation

Schedule "A", Annexed to Answer of American Smelting & Refining Company

Modern Exportation

Harry Liebowitz doing business as Modern Glass & Wire Supply Company.

(2399)

Mercaderias Peruanas S. A.

Meyerhans & Cie. S. A.

Etablissements Francois Masurel Freres

Norge Boats, Inc.

John E. Murray & Charles S. Nicholson co-partners doing business under the firm name and style of Nicholson & Company.

North & Central American Hide Corporation

New Amsterdam Import Co., Inc.

Richard M. Ott & Sons, Inc.

Otis McAllister & Co.

O'Neill Brothers, Inc.

Parker Machine Co., Inc.

Paper Corporation of United States

Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim & George T. Beattie as trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust

Pojhola Insurance Company

William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell R. Longshore co-partners doing business under the firm name and style of I. Reifsnyder Son & Co.

Schedule "A", Annexed to Answer of American Smelting & Refining Company

Joseph Rosenthal's Sons Inc.

S. Rosenfelder & Son, Inc.

Reliance International Manufacturing Co.

Walter H. Rothschild & Co., Inc.

S. K. F. Industries, Inc.

Irving M. Sobin Co., Inc.

Jos. Sultan & Sons, Inc.

Paul A. Straub & Co., Inc.

E. Richard Schwabach, Julius Schure, N. W. Feingold, Paul D. Perutz, George J. Perutz and Fred W. Perutz, co-partners doing business under the firm name and style of Schwabach & Company.

(2400)

Christopher Smiles & Co., Inc.

F. Schumacher & Co.

George Scherr & Co., Inc.

William Steck & Co., Inc.

Standard Sales Steel Co., Inc.

J. Shore & Co.

R. K. Sterling & Maude A. Sterling co-partners doing business under the firm name and style of D. L. Sterling & Sons

A. Samyn Permandt

Societe des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.)

Stein Hall & Co., Inc.

Schedule "A", Annexed to Answer of American Smelting & Refining Company

Switzerland General Insurance Company, Ltd.

William T. Newbold & James M. Reilly co-partners doing business under the firm name and style of Nathan Trotter & Co.

F. H. Taussig

The Travelers Fire Insurance Company

Touraine Flowers, Inc.

United Hat Fur Cutting Company

Bernhard Ullmann & Co., Inc.

Ullmann-Allied Overseas Associates Ltd.

Union des Fabriques Belges de Textiles Artificiels S. A.

Firma J. van Beelen e. v.

C. J. Van Houten & Zoon n. v.

Western Dairy Products, Inc.

S. H. Waldstein Co., Inc.

Wool Distributing Corporation

Georg Wertheimer

W. W. Windle Company

Rembert Wurlitzer

Theodore Willich, Albert Willich & Anton F. Dolce, co-partners doing business under the firm name and style of Willich & Company and

David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners doing business under the firm name and style of Samuel Zeitlin's Sons.

Claim of Maria A. Verbeeck, et al.

(2417)

[SAME TITLE]

Claim of MARIA A. VERBEECK, et al.
For $22,500.00

First: Maria Angelina Verbeeck, as surviving widow, and Maurice Verbeeck, Simone Verbeeck, and Leo Verbeeck, as surviving children, of Joseph Antony Verbeeck, deceased, appear and make claim against the above named petitioner in a cause of damage for death on the high seas by wrongful act.

Second: Claimants are subjects of the Kingdom of Belgium, residing at Boechout, Antwerp, Belgium. Claimant Maria Angelina Verbeeck is the surviving widow of Joseph Antony Verbeeck, deceased, and claimants Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck are surviving children of said decedent.

Third: Decedent Joseph A. Verbeeck left surviving him the claimants listed above. Excepting for said claimants, decedent left surviving him no wife, husband, parent, child or other dependent relative. Each of the above named claimants has sustained damages and injury and personal pain and suffering, and has been deprived of support and of the reasonable expectation of pecuniary benefit, by reason of the death of said decedent, and they have thereby been damaged in the total sum above stated, no part of which has been paid although duly demanded.

(2418)

Fourth: The Petitioner is a corporation duly organized, created and existing under and by virtue of the laws of the Kingdom of Norway, with an office and place of business at Oslo, Norway. Petitioner was at all times

herein mentioned the owner and operator of the M. S. "Black Gull", which, at all the times herein mentioned, was a general ship engaged in the common carriage of passengers and merchandise for hire, between the ports of Hamburg, Bremen, Antwerp and Rotterdam and the ports of New York, Boston and Philadelphia.

THE NATURE OF YOUR CLAIMANTS' CLAIM

Fifth: On or about the 1st day of July, 1952, petitioner engaged the above named decedent as a seaman, to wit, a mess boy, to serve in that capacity aboard the Norwegian Steamship "Black Gull" on a voyage from Antwerp, Belgium to New York, Boston and Philadelphia. Petitioner was obligated to furnish decedent with a safe place to work, and was further obligated to maintain the M. S. "Black Gull" in a safe condition. In breach of those obligations, petitioner, among others, caused or permitted the said steamship to be, or to become, an unsafe place to work, and failed to exercise due care to maintain such steamship in a safe condition. As a result thereof, and in consequence of the willful and gross negligence of petitioner, among others, a fire broke out on said steamship, on the high seas, on or about the 18th day of July, 1952, and as a result thereof decedent lost his life.

THE GROUNDS OF YOUR CLAIMANTS' CLAIM

Sixth: Said fire and the consequent death of decedent were not in any degree caused by any fault, neglect or want of care of decedent or of claimants, but were caused by the wrongful acts, neglect and default and by the willful and gross negligence of petitioner, its officers, agents and servants, among others.

(2419)

Seventh: At all times herein mentioned it was, and it now is, the law of the Kingdom of Norway, that an

action is maintainable against any corporation which by wrongful acts, neglect, or default, shall have caused the death of any person. By the said law of the Kingdom of Norway, such action may be brought by, and for the benefit of, the spouse and children of the person whose death shall have been caused, and shall be brought by them. A copy of a translation of the pertinent provisions of said law, which is known as "An Act concerning the entry into force of the General Civil Penal Code", is annexed hereto, marked Exhibit "A", and made a part hereof. The said act was, at all the times mentioned in this claim, and still is, in force in the Kingdom of Norway, and extended and still extends in its operation to all deaths occurring on or caused by Norwegian vessels on the high seas.

At all the times mentioned in this claim, it was, and now is, the law of the United States of America, that "whenever a right of action is granted by the law of any foreign state, on account of death by wrongful act, negligence or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the Courts of the United States, without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding". (Title 46 U. S. C., Section 764)

Eighth: The M. S. "Black Gull" was a vessel of Norwegian registry.

THE ITEMS OF YOUR CLAIMANTS' CLAIM

Ninth: The items of your claimants' claim are as follows:

For loss of reasonable expectation of pecuniary benefit (2420) to Marie Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck, and Leo Verbeeck, the sum of $22,500.00. The date on which this claim accrued was July 18, 1952.

Tenth: By reason of the premises, claimants have sustained damages in the sum of $22,500.00 against which no credits exist, and no part of which has been paid, although duly demanded.

WHEREFORE, Claimants present this claim and pray that damages be allowed your claimants in the sum of $22,500.00, that payment thereof be decreed, and that such other and further orders may be made to protect the rights of claimants as to the Court may seem just and proper.

BIGHAM, ENGLAR, JONES & HOUSTON
Proctors for Claimants.

(Verified July 13, 1953.)

EXHIBIT A, ANNEXED TO CLAIM OF MARIA A. VERBEECK, ET AL.

(2422)

Translation from Norwegian.

Certain provisions concerning damages included in the Norwegian Act of May 22, 1902, No. 11, known as the "Act concerning the Entry into Force of the General Civil Penal Code".

Section 19.

If any person has caused any injury to the body or limbs or to the health of another, or if he has infringed his personal liberty, and if the wrongdoer is liable in damages according to any other principles of law, he shall—besides indemnifying the injured party for the

injury which he has suffered—also compensate him for any impairment of his future earning capacity, to such extent as the Court may consider to be fair and reasonable having regard to the degree of negligence and any other circumstances involved.

If the act concerned has been committed wilfully or by gross negligence, the Court may also order the wrongdoer to pay to the injured party such amount of money as may be considered fair and reasonable, by way of compensation for personal pain and suffering or for any other injury of a non-economic nature which has been caused by the act concerned.

The provisions of the first and second paragraphs of this section shall also apply to any person who has committed an offense according to sections 168, 169, 191-196, 201, 210, or 217-221 of the Penal Code.

Section 20.

In the event that the act concerned has caused the death of another person, the person who is liable in damages shall pay to the person responsible for the burial the costs incurred thereby.

Section 21.

If, in consequence of the death which has been caused, any person is deprived of his supporter, the person who is liable (2423) in damages shall be ordered to indemnify the dependent for the loss which he is considered to suffer as a result thereof, to such extent as is held by the Court to be just and reasonable having regard to the degree of negligence and any other circumstances involved.

If the death has been caused wilfully or by gross negligence, the Court may also award the spouse, children or parents of the person killed such compensation as provided in the second paragraph of section 19.

Exhibit A. Annexed to Claim of Maria A. Verbeeck, et al.

Section 28.

The right to recover damages shall lapse after a period of 3 years; provided, however, that the period—if the claim has resulted from a punishable offence—shall be 10 years from the date when the person wronged became aware of the injury and of the identity of the person responsible for it.

If the claim for damages has resulted from a punishable offence, the claim is in any event recoverable in connection with any criminal proceedings in which the wrongdoer is sentenced. If no decision is made by the Court with regard to a claim for damages submitted during the criminal proceedings, the provisions of the second paragraph of section 12 of the Statute of Limitations of July 27, 1896, shall apply.

The right of seizure according to section 36 of the Penal Code is not subject to prescription.

Correct translation certified.
Oslo, January 5, 1953.

(signed) J. Wulfsberg SEAL
J. Wulfsberg
(Authorized translator)

Answer of Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck to the Petition of Skibs A/S Jolund as Owner of the M. S. "Black Gull", as Amended

(2440)

To the Honorable the Judges of the United States District Court for the Southern District of New York

The answer of Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck to the petition of Skibs A/S Jolund as owner of the M. S. "Black Gull", as amended, in a cause of exoneration from and limitation of liability, alleges and respectfully shows to this Honorable Court, upon information and belief, as follows:

First: Claimants have heretofore filed their claims herein under oath.

Second: Claimants admit the allegations of the First Article of the Petition.

Third: Claimants admit the allegation of the Second Article of the Petition.

Fourth: Claimants deny the allegations of the Third Article of the Petition.

Fifth: Claimants admit that at the time mentioned in the Petition, the motorship "Black Gull" was registered and operated under the Norwegian flag as a cargo vessel and deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Fourth Article of the Petition.

Sixth: Claimants deny the allegations of the Fifth Article of the Petition.

Seventh: Claimants admit that on July 18, 1952, the motorship "Black Gull" was proceeding on a voyage from Rotterdam to New York. They further admit that on

Answer of Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck to the Petition of Skibs A/S Jolund as Owner of the M. S. "Black Gull", as Amended

that day while the vessel was at sea, a fire was discovered on board said vessel. (2441) They further admit that as a result thereof the vessel became a constructive total loss with her equipment and most of her cargo before the termination of the voyage and that the amount of damage to, and loss of property and of injuries and deaths which may have occurred in the course of the said voyage are not at present calculable. They deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Sixth Article of the Petition.

Eighth: Claimants deny the allegations of the Seventh Article of the Petition.

Ninth: Claimants deny the allegations of the Eighth Article of the Petition.

Tenth: Claimants deny that petitioner has valid defenses in law and/or upon the merits to their claims, and deny the remaining allegations of the Ninth Article of the Petition.

Eleventh: Claimants deny that under the law of the United States petitioner is entitled to the benefits of the statutes mentioned in the Tenth Article of the Petition with respect to their claims and allege that under the laws of the United States petitioner is not entitled to limit its liability with respect to claimants' claims.

Twelfth: Claimants deny that they have any knowledge or information sufficient to form a belief as to the allegations of the Eleventh Article of the Petition.

Thirteenth: Claimants admit the allegations of the first two paragraphs of the Twelfth Article of the Peti-

tion as amended. They further admit that Joseph Verbeeck, messboy, a member of the crew of the M. S. "Black Gull" died in the fire on board her, and that claimant Maria Verbeeck, is his widow (2442) and allege that she has now filed claim in this proceeding through her attorneys. They deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Twelfth Article of the Petition as amended.

Fourteenth: Claimants deny that they have any knowledge or information sufficient to form a belief as to the allegations of the Thirteenth Article of the Petition, as amended.

Fifteenth: Claimants admit that the premises alleged in the Petition are within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court and deny the remaining allegations of the Fourteenth Article of the Petition.

WHEREFORE Claimants pray that their claims heretofore filed herein be allowed, with interest and costs; that the Petition herein be denied and dismissed; and that they may have such other and further and different relief as in law and justice they may be entitled to receive.

BIGHAM, ENGLAR, JONES & HOUSTON
Proctors for Claimants
Office & P. O. Address
99 John Street
New York 38, N. Y.

(Verified July 29, 1953.)

Docket Entries in American Smelting & Refining Company, et al.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Ad. 178-342

AMERICAN SMELTING & REFINING COMPANY, ATKINSON HASERICK & Co., ANGLO FABRICS COMPANY, INC., FREDERICK E. AUBEL, JR. & FREDERICK E. AUBEL, III, co-partners doing business under the firm name of F. & E. AUBEL, OLAF RAVNDAL as treasurer of AMERICAN EXPRESS COMPANY, an unincorporated association of more than 7 persons, ATALANTA TRADING CORPORATION, ARCHER-DANIELS-MIDLAND COMPANY, AMEUROPE METALS, INC., ERNEST ADLER Co., INC., AMERICAN OVEROCEAN CORPORATION, ASSOCIATED METALS & MINERALS CORPORATION, STANLEY WALLACH doing business as THE ATLANTIC WORKS, BEATTY & HYDE, INC., BRACHT & Co., INC., THE BAKER CASTOR OIL COMPANY, BROWNING CHEMICAL CORPORATION, BELL TELEPHONE MANUFACTURING COMPANY, S. A., BUDDE & WESTERMAN, D. BENEDETTO, INC., BALOISE MARINE INSURANCE COMPANY, LTD., CORDINGLY COMPANY, CAPITAL AIRLINES, COLUMBIA EXPORT Co. INC., COLONIAL MIRROR & GLASS CORP., FREDERICK M. CONE & Co., INC., COSA CORPORATION, EZL. DUNWOODY Co., DICKERSON'S OVERSEAS COMPANY, a Division of the DICKERSON COMPANY, INC., A. de SWAAN, INC., DELMEY TRADING CORPORATION, THE ENTERPRISE MANUFACTURING COMPANY OF PENNSYLVANIA, A. L. ERLANGER Co., INC., J. EISENBERG, INC., EUROPEAN CHEMICAL Co., INC., WM. S. FEBIGER Co. & INTERCONTINENTAL WOOL Co., ROBERT S. FISH & Co., INC., FEDERAL LIQUORS, LTD., LEWIS C. FRANKLIN & LEWIS C. FRANKLIN, JR., co-partners doing business under the firm name and style of FRANKLIN & Co., FRIEMAN KNITWEAR CORPORATION, FEDERATED DEPARTMENT STORES, INC., THE F. & R. LAZARUS & COMPANY, DIV., FEIN & Co., INC., B. S. BERGENSEN & JORGEN KRAG, co-partners doing business under the firm name and style of FROSTY FOODS COMPANY, FRANK A. G., ANDREW FISHER CYCLE Co., INC., FALLANI

& Cohn Co., Inc., Garden Supply Sales Corporation, Gotaas Export Corporation, Robert A. Hurley & Co., Inc., Richard W. Homer doing business under the firm name and style of Richard W. Homer Company, A. H. Helmig & Co., Inc., Frank B. Healis & Co., Inc., Hohenberg Co., Inc., Industrial Sales Corporation, Innis Speiden & Co., Inc., Imperial International Corporation, Imex S. A., Import Export Industries, Inc., International Expediters, Inc., Interstate Casing Corporation, J. M. Trading Corporation, Jacky Maeder & Co., Robt. Jowitt & Sons, Ltd., Kreglinger, Inc., H. M. Koeningswerther, Inc., Albert Kremper, Fred H. Lenway & Co., Inc., Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish II, Samuel T. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Herbert Higgins, and Samuel L. Stedman, co-partners doing business under the firm name and style of Carl M. Loeb Rhoades & Company, Ladoe, S. A., Maryland Trading Corporation, Munro Kincaid Mottla, Inc., Mandel Brothers, Inc., Marble Supply Corporation of America, Monsanto Chemical Co., Marum Knitting Mills, Inc., Metasco, Inc., Mitropa Corporation, Miller Products Export Corporation, Merino Wool Corporation, Modern Exportation, Harry Liebowitz doing business as Modern Glass & Wire Supply Company, Mercaderias Peruanas S. A., Meyerhans & Cie. S. A., Etablissements Francois Masurel Freres, Norge Boats, Inc., John E. Murray & Charles S. Nicholson co-partners doing business under the firm name and style of Nicholson & Company, North & Central American Hide Corporation, New Amsterdam Import Co., Inc., Richard M. Ott & Sons, Inc., Otis McAllister & Co., O'Neill Brothers, Inc., Parker Machine Co., Inc., Paper Corporation of United States, Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim & George T. Beattie as trustees of Henry W. Peabody & Co., Association, A Massachusetts Voluntary Trust, Pothola Insurance Company, William A.

Docket Entries in American Smelting & Refining Company, et al.

LONGSHORE, MALCOLM R. LONGSHORE, HENRY G. REIFSNYDER, HENRY P. ORLEMANN, JR., and RUSSELL R. LONGSHORE co-partners doing business under the firm name and style of I. REIFSNYDER SON & CO., JOSEPH ROSENTHAL'S SONS, INC., S. ROSENFELDER & SON, INC., RELIANCE INTERNATIONAL MANUFACTURING CO., WALTER H. ROTHSCHILD & CO., INC., S. K. F. INDUSTRIES, INC., IRVING M. SOBIN CO., INC., JOS. SULTAN & SONS, INC., PAUL A. STRAUS & CO., INC., E. RICHARD SCHWABACH, JULIUS SCHURE, N. W. FEINGOLD, PAUL D. PERUTZ, GEORGE J. PERUTZ and FRED W. PERUTZ, co-partners doing business under the firm name and style of SCHWABACH & COMPANY, CHRISTOPHER SMILES & CO., INC., F. SCHUMACHER & CO., GEORGE SCHERR & CO., INC., WILLIAM STECK & CO., INC., STANDARD SALES STEEL CO., INC., J. SHORE & CO., R. K. STEPLING & MAUDE A. STERLING co-partners doing business under the firm name and style of D. L. STERLING & SONS, A. SAMYN PERMANDT, SOCIETE DES MINES ET FONDERIES DE ZINC DE LA VIELLE MONTAGNE (S. A.), STEIN, HALL & CO., INC., SWITZERLAND GENERAL INSURANCE COMPANY, LTD., WILLIAM T. NEWBOLD & JAMES M. REILLY co-partners doing business under the firm name and style of NATHAN TROTTER & CO., F. H. TAUSSIG, THE TRAVELERS FIRE INSURANCE COMPANY, TOURAINE FLOWERS, INC., UNITED HAT FUR CUTTING COMPANY, BERNHARD ULLMANN & CO., INC., ULLMANN-ALLIED OVERSEAS ASSOCIATES LTD., UNION des FABRIQUES BELGES de TEXTILES ARTIFICIELS S. A., FIRMA J. van BEELEN e. v., C. J. VAN HOUTEN & ZOON n. v., WESTERN DAIRY PRODUCTS, INC., S. H. WALDSTEIN CO., INC., WOOL DISTRIBUTING CORPORATION, GEORG WERTHEIMER, W. W. WINDLE COMPANY, REMBERT WURTLITZER, THEODORE WILLICH, ALBERT WILLICH & ANTON F. DOLCE, co-partners doing business under the firm name and style of WILLICH & COMPANY, DAVID E. ZEITLIN, HARRY L. ZEITLIN and LOUIS ZEITLIN, co-partners doing business under the firm name and style of SAMUEL ZEITLIN'S SONS, TOURAINE FLOWERS, INC., COSA CORPORATION, B. N. S. INTERNATIONAL SALES CORPORATION, W. L. M. BENSDORP COMPANY, N. V. TWEKA, TRICOTFABRIEKEN, DUESBERG-BOSSON MACHINES TEXTILES, CHARLES CENSOR, GARNINDUSTRIE G. m.

Docket Entries in American Smelting & Refining Company, et al.

b. H., A/S Dank Kodekstradt Company, Aabenraa, Andels-Svineslagteriet i. Kolding, United Nations and Edward S. Blake and "John" Boyle, the name "John" being fictitious, the true given name of said person being unknown, co-partners doing business under the firm name and style of Blake & Boyle

—against—

Black Diamond Steamship Corporation and Black Diamond Lines, Inc.

(K)

DATE		
July 9-53	Filed	libel & stip. for costs ($100. Indemnity Insurance Co. of N. A.)
July 9-53	Issued	Citation—Ret. 7/21/53.
July 14-53	Filed	citation with Marshal's return. Served Black Diamond Steamship Corp. on July 10, 1953.
July 31-53	Filed	Notice of Appearance.
July 31-53	"	Stip. for respondent's costs ($100. Natl. Surety Corp.)
Jan. 5-54	"	answer.
Jan. 11-54	"	note of issue for trial.
Feb. 18-54	"	interrogatories propounded by libellants.
Mar. 1-54	"	exceptions to interrogs. propounded by libellants.
Mar. 10-54	"	stip. & order extending time to answer interrogs. to 5/25/54. Edelstein, J.
June 8-54	"	answers to interrogatories.
June 10-54	"	libellants' exceptions to respondent's answers to interrogs.

Docket Entries in American Smelting & Refining Company, et al.

DATE		
June 10-54	Filed	notice of motion re: to produce and permit. Ret. 6/15/54.
June 14-54	"	stip. & order amending libel. nunc pro tunc. McGohey, J.
June 15-54	Memo	endorsed on motion papers filed 6/10/54. Motion withdrawn. McGohey, J.
July 22-54	Filed	respondent's answers to libellants' interrogs.
July 30-54	Filed	interrogatories. (Also in A178-370, A178-380 & 173-350)
Sept. 24-54	"	Libelant, American Smelting & Ref. Co.'s answer to interrogs. (Also in A178-370).
Oct. 1-54	"	exceptions and objections to libellants American Smelting & Refining Corp to respondent's interrogs. (Also in A 178-370)
Nov. 22-54	"	stip. & order substituting Dow & Symmers in place of Pyne Lynch & Smith as proctors for respt.
Jan. 5-55	"	notice of motion re: order requiring libellants to further answer the propounded interrogs. Ret. 1/11/55. (Also in A178-370, A178-380 and A173-350).
Jan. 25-55	Memo.	end. on motion papers filed 1/5/55. Motion disposed of as indicated upon argument. Submit order. Bicks, J. (Also in A178-370, A178-380 and A173-350).
Mar. 8-55	Filed	consent & order sustaining exceptions to respt's answers or failure to answer certain respt's. interrogs.; that liblts. answer respt's. interrogs. within ten days etc., etc. Bicks, J. (Also in A178-370, A178-380 & A173-350).

Docket Entries in American Smelting & Refining Company, et al.

DATE		
Mar. 21-55	Filed	Supplemental Answers to certain interrogs. (Also in A178-370 .
Sep 1 1955	Filed	notice of non-readiness for trial
Sep 1 1955	Filed	notice of non-readiness for trial
Dec. 23-55	Filed	order that Commission issue to Rotterdam, Kingdom of The Netherlands, etc. Walsh, J. (Also in A178-370 and A178-380)
Dec. 29-55	"	notice of motion to revoke calendar dispositions etc. Memo. endorsed. Motion granted as indicated. Weinfeld, J. (Filed in A 174-34)
Dec. 29-55	"	affidavit and order revoking calendar dispositions, etc., Weinfeld, J. (Filed in A 174-34)
Dec. 29-55	"	affidavit of Daniel L. Stonebridge. (Filed in A 174-34)
Jan. 12-56	"	direct. interrogs. propounded to Johannes Adrianus Driesprong, et al (Also in A178-370 and A178-380)
Jan. 12-56	"	direct. interrogs. propounded to Pieter Spaanderman. (Also in A178-370 and A178-380).
Feb. 6-56		Before Dimock, J. Trial begun. (Consolidated for trial with A174-34, A178-370 and A178-380.)
Feb. 7-56		Trial continued.
(M)		
Feb. 8-56		Trial continued. Libelant and Passenger claimant rest.
Feb. 9th, 14th, 15th, 16th, 17th, 21st, 23rd, 24th and 27th.		Trial continued.
Feb. 28-56		Trial concluded. Decision reserved.

Docket Entries in American Smelting & Refining Company, et al.

DATE		
Mar. 22-56	Filed	Record of Proceedings of Feb. 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27, 28, 1956. (Also in A174-34 and two other cases).
May 16-56	"	Opinion #22617. Dimock, J. Petition for exoneration granted and libelants recovery denied. (Filed in A174-34)
May 25-56	"	notice of motion re: to delete and strike as indicated. Ret. 5/29/56. (Filed in A174-34) and in 3 other cases.
July 18-56	"	amended memorandum (Opinion #22,-813) Dimock, J. (Filed in A 174-34)
July 23-56	"	second amended memorandum (Opinion #22,829) Dimock, J. (Filed in A 174-34)
July 27-56	"	proposed findings of fact and conclusions of law with notations on the margins by Judge Dimock. (Filed in A 178-370)
July 27-56	"	proposed findings of fact and conclusions of law with notations on the margins by Judge Dimock. (Filed in A 174-34)
Oct. 4-56	"	consent order for Finding of Facts and Conclusions of Law. Dimock, J. (Filed in A.174-34 & Also in A.178-370, A.178-380)
Nov. 28-56	Filed	bill of costs & final decree. Libel dismissed and resps. recover sum of $1212.70 costs taxed. Dimock, J.
Dec. 14-56	Filed	notice of appeal. Mailed copy to attorney 12-14-56.
Dec. 14-56	"	assignments of error.
Dec. 14-56	"	Bond Undertaking costs of appeal ($250. Ind. Ins. Co. of N. A.)

Libel and Complaint of American Smelting & Refining Company, et al.

(2711)

To the Honorable the Judges of the United States District Court for the Southern District of New York

The Libel and Complaint of American Smelting & Refining Company, Atkinson Haserick & Co., Anglo Fabrics Company, Inc., Frederick E. Aubel, Jr. & Frederick E. Aubel, III, co-partners doing business under the firm name of F. & E. Aubel, Olaf Ravndal as treasurer of American Express Company, an unincorporated association of more than 7 persons, Atalanta Trading Corporation, Archer-Daniels-Midland Company, Ameurope Metals, Inc., Ernest Adler Co., Inc., American Over-Ocean Corporation, Associated Metals & Minerals Corporation, Stanley Wallach doing business as The Atlantic Works, Beatty & Hyde, Inc., Bracht & Co., Inc., The Baker Castor Oil Company, Browning Chemical Corporation, Bell Telephone Manufacturing Company, S. A., Budde & Westerman, D. Benedetto, Inc., Baloise Marine Insurance Company, Ltd., Cordingly Company, Capital Airlines, Columbia Export Co., Inc., Colonial Mirror & Glass Corp., Frederick H. Cone & Co., Inc., Cosa Corporation, Ezl. Dunwoody Co., Dickerson's Overseas Company, a Division of the Dickerson Company, Inc., A. de Swaan, Inc., Delmey Trading Corporation, The Enterprise Manufacturing Company of Pennsylvania, A. L. Erlanger Co., Inc., J. Eisenberg, Inc., European Chemical Co., Inc., Wm. S. Fehiger Co. & Intercontinental Wool Co., Robert S. Fish & Co., Inc., Federal Liquors, Ltd., Lewis C. Franklin & Lewis C. Franklin, Jr. co-partners doing business under the firm name and style of Franklin & Co., Frieman Knitwear Corporation, Federated Department Stores, Inc., The F. & R. Lazarus & Company,

Div., Fein & Co., Inc., B. S. Bergensen & Jorgen Krag, co-partners doing business under the firm name and style of Frosty Foods Company, Frank A. G., Andrew Fisher Cycle Co., Inc., Fallani & Cohn Co., Inc., Garden Supply Sales Corporation, Gotaas Export Corporation, Robert A. Hurley & Co., Inc., Richard W. Homer doing business under the firm name and style of Richard W. Homer Company, A. H. Helmig & Co., Inc., (2712) Frank B. Healis & Co., ., Hohenberg Co., Inc., Industrial Sales Corporation, Innis Speiden & Co., Inc., Imperial International Corporation, Imex S. A., Import-Export Industries, Inc., International Expediters, Inc., Interstate Casing Corporation, J. M. Trading Corporation, Jacky Maeder & Co., Robt. Jowitt & Sons, Ltd., Kreglinger, Inc., H. M. Koeningswerther, Inc., Albert Kremper, Fred H. Lenway & Co., Inc., Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish II, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Herbert Higgins, and Samuel L. Stedman, co-partners doing business under the firm name and style of Carl M. Loeb Rhoades & Company, Lador S. A., Maryland Trading Corporation, Munro Kincaid Mottla, Inc., Mandel Brothers, Inc., Marble Supply Corporation of America, Monsanto Chemical Co., Marum Knitting Mills, Inc., Metasco, Inc., Mitropa Corporation, Miller Products Export Corporation, Merino Wool Corporation, Modern Exportation, Harry Liebowitz doing business as Modern Glass & Wire Supply Company, Mercaderias Peruanas S. A., Meyerhans & Cie. S. A., Etablissements Francois Masurel Freres, Norge Boats, Inc., John E. Murray & Charles S. Nicholson co-partners doing business under the firm name and style of Nicholson & Company, North & Central American Hide Corporation,

Libel and Complaint of American Smelting & Refining Company, et al.

New Amsterdam Import Co., Inc., Richard M. Ott & Sons, Inc., Otis McAllister & Co., O'Neill Brothers, Inc., Parker Machine Co. Inc., Paper Corporation of United States, Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim & George T. Beattie as trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust, Pojhola Insurance Company, William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell R. Longshore co-partners doing business under the firm name and style of I. Reifsnyder Son & Co., Joseph Rosenthal's Sons, Inc., S. Rosenfelder & Son, Inc., Reliance International Manufacturing Co., Walter H. Rothschild & Co. (2713) Inc., S. K. F. Industries, Inc., Irving M. Sobin Co., Inc., Jos. Sultan & Sons, Inc., Paul A. Straub & Co., Inc., E. Richard Schwabach, Julius Schure, N. W. Feingold, Paul D. Perutz, George J. Perutz and Fred W. Perutz, co-partners doing business under the firm name and style of Schwabach & Company, Christopher Smiles & Co., Inc., F. Schumacher & Co., George Scherr & Co., Inc., William Steck & Co., Inc., Standard Sales Steel Co., Inc., J. Shore & Co., R. K. Sterling & Maude A. Sterling co-partners doing business under the firm name and style of D. L. Sterling & Sons, A. Samyn Permandt, Societe des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.), Stein Hall & Co., Inc., Switzerland General Insurance Company, Ltd., William T. Newbold & James M. Reilly co-partners doing business under the firm name and style of Nathan Trotter & Co., F. H. Taussig, The Travelers Fire Insurance Company, Touraine Flowers, Inc., United Hat Fur Cutting Company, Bernhard Ullmann & Co., Inc., Ullmann-Allied Overseas Associates Ltd., Union des Fabriques Belges de Textiles Artificiels S. A., Firma J. van Beelen c. v., C. J. Van Houten & Zoon n. v., Western Dairy Products, Inc., S. H. Waldstein Co., Inc., Wool Distribut-

ing Corporation, Georg Wertheimer, W. W. Windle Company, Rembert Wurlitzer, Theodore Willich, Albert Willich & Anton F. Dolce, co-partners doing business under the firm name and style of Willich & Company, David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners doing business under the firm name and style of Samuel Zeitlin's Sons, Touraine Flowers, Inc., Cosa Corporation, B. N. S. International Sales Corporation, W. L. M. Bensdorp Company, N. V. Tweka, Tricotfabrieken, Duesberg-Bosson Machines Textiles, Charles Censor, Garnindustrie G. m. b. H., A/S Dank Kodekstradt Company, Aabenraa, Andels-Svineslagteriet i. Kolding, United Nations and Edward S. Blake and "John" Boyle, the name "John" being fictitious, the true given name of said person being unknown, co-partners doing business under the firm name and style of Blake & Boyle (2714) —against— Black Diamond Steamship Corporation and Black Diamond Lines, Inc., in causes of contract and non-delivery of cargo, civil and maritime, alleges and respectfully shows to this Honorable Court, upon information and belief, as follows:

First: At all times hereinafter mentioned, libellants were, and they now are, individuals, co-partnerships and corporations as described on Schedule "A" hereto annexed, with offices and place of business as set out on the said Schedule "A".

Second: At all said times, Respondents Black Diamond Steamship Corporation and Black Diamond Lines, Inc., were, and now are, corporations duly organized, created and existing according to law, with offices and place of business at No. 39 Broadway, City, County and State of New York, within this District.

Third: At all said times, respondents were the charterers and operators of the S. S. "Black Gull", which at all said times respondents placed on berth and operated as a general ship in the common carriage of merchandise on the high seas for hire between certain Northern European ports and United States Atlantic ports.

Fourth: During the months of June and July, 1952, the shippers whose names are set out on Schedule "B" hereto annexed, delivered to respondents, among others, as common carriers at the respective ports of shipment set out on said Schedule, the shipments of merchandise described on said Schedule, opposite their respective names, in good order and (2715) condition, for transportation by said respondents, among others as common carriers from the respective ports of shipment to the ports of destination, set out on said Schedule, and delivery there, in like good order and condition as when shipped to the consignees whose names are set out on said Schedule, in consideration of certain agreed freights and in accordance with the valid terms of certain bills of lading signed and delivered to said shippers at the respective ports of shipment, by duly authorized agents of the respondents and others.

Fifth: Thereafter, the said shipments were shipped and placed on board the S. S. "Black Gull" at the respective ports of shipment by respondents, among others, and thereafter the said steamship having the said shipments on board sailed from her last port of loading and thereafter arrived at the port of New York in tow. The shipments described on Schedule "B" either have not been delivered at all to the persons entitled thereto or have been delivered to them short, slack and seriously injured and damaged, and such parts of said shipments

as have been delivered were, at time of delivery, subject to alleged liens for salvage and other charges not contracted for in the said bills of lading. In addition, the persons entitled to delivery thereof were obliged to incur, and did incur, heavy expenses to obtain delivery of such portions of said shipments as were delivered.

Sixth: Prior to the arrival of the S. S. "Black Gull" at New York, and prior to the filing of this suit, libellants became for value the owners of the shipments described on Schedule "B" hereto annexed, as their names are set out on said Schedule "B" as libellants owners opposite the respective shipments or by payments to the respective (2716) owners of said shipments under their policies of insurance, became subrogated to the rights of said owners with respect to said shipments and the non delivery thereof or delivery thereof, in damaged condition and subject to liens and other expenses. Each libellant brings this suit with respect to the shipments opposite which his name is set out as libellant owner on Schedule "B" on his or its own behalf and on behalf of all others who may ultimately prove to be interested in said shipments as their respective interests may ultimately appear.

Seventh: Libellants and their respective predecessors in title and in interest, and those on whose behalf this suit is brought, have duly performed all the terms and conditions of the contracts of carriage on their respective parts to be performed.

Eighth: By reason of the premises, libellants and those on whose behalf this libel is filed have suffered and sustained damages in the sums set out on Schedule "C" hereto annexed, as nearly as the same can now be estimated, totaling $2,903,126., no part of any of which sums has been paid, although duly demanded.

Libel and Complaint of American Smelting & Refining Company, et al.

Ninth: All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libellants pray:

1. That process in due form of law, according to the course and practice of this Court in causes of Admiralty and Maritime jurisdiction, may issue against Black Diamond Steamship Corporation and Black Diamond Lines, Inc., citing them to appear and answer on oath all and singular the matters (2717) aforesaid.

2. That the Court will order, adjudge and decree that the said respondents and the S. S. "Black Gull" pay to the libellants the damages suffered by each of them, together with interest thereon, and their costs and disbursements.

3. And that libellants have such other and further relief in the premises as in law and justice they may be entitled to receive.

BIGHAM, ENGLAR, JONES & HOUSTON
Proctors for Libellants
Office & P. O. Address
99 John Street
New York 38, N. Y.

(Verified July 6, 1953.)

SCHEDULE A, ANNEXED TO LIBEL AND COMPLAINT OF AMERICAN SMELTING & REFINING COMPANY, ET AL.

(2719)

Claimant	Status	Place of Business
American Smelting & Refining Co.	Corporation organized according to law.	120 Broadway New York, N. Y.
Atkinson Haserick & Company	Corporation organized according to law.	211 Congress Street, Boston, Mass.
Anglo Fabrics Co., Inc.	Corporation organized according to law.	Webster, Mass.
Frederick E. Aubel, Jr. and Frederick E. Aubel, III	Co-partners d/b/u firm name and style of F. & E. Aubel	Philadelphia, Pa.
Olaf Ravndal	Treas. of Amer. Exp. Co., an unincorporated assoc. of more than 7 persons	65 Bway. New York, N. Y.
Atalanta Trading Corp.	Corporation organized according to law.	77 Hudson Street New York, N. Y.
Archer-Daniels-Midland Company	Corporation organized according to law.	233 Broadway New York, N. Y.
Ameurope Metals, Inc.	Corporation organized according to law.	122 East 42nd Street New York, N. Y.
Ernest Adler Co., Inc.	Corporation organized according to law.	67 Wall Street New York, N. Y.
American Overocean Corporation	Corporation organized according to law.	70 East 45th Street New York, N. Y.
Associated Metals & Minerals Corporation	Corporation organized according to law.	75 West Street, New York, N. Y.
Stanley Wallach	Individual d/b/a The Atlantic Works	370 Atlantic Avenue Boston, Mass.
Beatty & Hyde Inc.	Corporation organized according to law.	290 Summer Street Boston, Mass.
Bracht & Co., Inc.	Corporation organized according to law.	185 Summer Street Boston, Mass.
The Baker Castor Oil Company	Corporation organized according to law.	120 Broadway New York 5, N. Y.

Schedule A, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

(2720)

Claimant	Status	Place of Business
Browning Chemical Corporation	Corporation organized according to law.	150 Broadway New York, N. Y.
Bell Telephone Manufacturing Company S. A.	Corporation organized under laws of Kingdom of Belgium.	Antwerp, Belgium
Budde & Westermann	New York Corporation	350 Broadway New York, N. Y.
D. Benedetto Inc.	Corporation organized according to law.	420 Lexington Avenue New York, N. Y.
The Baloise Marine Insurance Company, Ltd.	Corporation organized according to law.	Basle, Switzerland
Cordingley Company	Corporation organized according to law.	185 Summer Street Boston, Mass.
Capital Airlines	Corporation organized according to law.	National Airport, Washington, D. C.
Columbia Export Co., Inc.	Corporation organized according to law.	501 Fifth Avenue New York, N. Y.
Colonial Mirror & Glass Corp.	Corporation organized according to law.	40 Prince Street New York, N. Y.
Frederick H. Cone & Co. Inc.	Corporation organized according to law.	181 Front Street New York, N. Y.
Cosa Corporation	Corporation organized according to law.	405 Lexington Avenue New York, N. Y.
Ezl. Dunwoody Co.	Corporation organized according to law.	1909 Market Street Philadelphia, Pa.
Dickersons Overseas Company, a Div. of The Dickerson Company Inc.	Corporation organized according to law.	Drexel Building Philadelphia, Pa.
A. de Swaan Inc.	Corporation organized according to law.	37 Wall Street New York, N. Y.
Delmey Trading Corporation	Corporation organized according to law.	141 Broadway New York, N. Y.
The Enterprise Mfg. Co. of Pa.	Corporation organized according to law.	Philadelphia, Pa.

Schedule A, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

(2721)

Claimant	Status	Place of Business
A. L. Erlanger Company, Inc.	Corporation organized according to law	389 Fifth Avenue New York, N. Y.
J. Eisenberg, Inc.	Corporation organized according to law	173 Hudson Street New York, N. Y.
European Chemical Co., Inc.	Corporation organized according to law	366 Broadway New York, N. Y.
Wm. S. Febiger Co. and Intercontinental Wool Company	Massachusetts corporation	(Febiger) 250 Summer Street, Boston, Mass. (Intercontinental) 75 Federal Street, Boston, Mass.
Robert S. Fish & Company, Inc.	Corporation organized according to law.	185 Summer Street Boston, Mass.
Federal Liquors Ltd.	Corporation organized according to law.	54 Chardon Street Boston, Mass.
Lewis C. Franklin and Lewis C. Franklin, Jr.	Co-partners d/b/u firm name and style of Franklin & Company.	146 Summer Street Boston, Mass.
Frieman Knitwear Corporation	Corporation organized according to law.	147 West 35th Street New York, N. Y.
Federated Dept. Stores Inc., The F. & R. Lazarus & Company Division	Corporation organized according to law.	Columbus, Ohio
Fein & Co., Inc.	Corporation organized according to law.	250 West 30th Street New York, N. Y.
B. S. Bergesen and Jorgen Krag	Co-partners d/b/u firm name and style of Frosty Foods Company	161 East 42nd Street New York, N. Y.
Frank A. G.	Corporation organized according to law.	Basle, Switzerland
Andrew Fisher Cycle Co. Inc.	Corporation organized according to law.	619 West 54th Street New York, N. Y.
Fallani & Cohn Inc.	Corporation organized according to law.	14 East 38th Street New York, N. Y.

Schedule A, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

(2722)

Claimant	Status	Place of Business
Garden Supply Sales Corporation	Corporation organized according to law.	550 West 55th Street New York, N. Y.
Gotaas Export Corp.	Corporation organized according to law.	20 Pine Street New York, N. Y.
Robert A. Hurley & Co., Inc.	Corporation organized according to law.	200 Summer Street Boston, Mass.
Richard W. Homer	Individual d/b/a Richard W. Homer & Company	212 Summer Street Boston, Mass.
A. H. Helmig & Co. Inc.	Corporation organized according to law.	121 Chestnut Street Philadelphia, Pa.
Frank B. Healis & Co. Inc.	Corporation organized according to law.	630 West Glenwood Avenue, Philadelphia, Pa.
Hohenberg Co. Inc.	Corporation organized according to law.	215 Fourth Avenue New York, N. Y.
Industrial Sales Corporation	Corporation organized according to law.	500 Fifth Avenue New York, N. Y.
Innis, Speiden & Co. Inc.	Corporation organized according to law	117 Liberty Street New York 6, N. Y.
Imperial International Corp.	Corporation organized according to law.	1776 Broadway New York, N. Y.
Imex S. A.	Corporation organized according to law.	Maracaibo, Venezuela
Import-Export Industries Inc.	Corporation organized according to law.	30 Rockefeller Plaza New York, N. Y.
International Expediters Inc.	Corporation organized according to law.	345 Hudson Street New York, N. Y.
Interstate Casing Corp.	Corporation organized according to law.	29 Vandewater Street New York, N. Y.
J, M. Trading Corp.	Corporation organized according to law.	111 West Jackson Blvd. Chicago, Ill.
(2723)		
Jacky Maeder & Co.	Entity existing under Swiss law	Geneva, Switzerland

Schedule A, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Status	Place of Business
Robt. Jowitt & Sons Ltd.	Corporation organized according to law.	Bradford, England
Kreglinger, Inc.	Corporation organized according to law.	200 Summer Street Boston, Mass.
H. M. Koenigswerther Inc.	Corporation organized according to law.	127 West 30th Street New York, N. Y.
Albert Kremper	Individual	Apartado Postal 1528 Mexico City D. F., Mex.
Lador S. A.	Corporation organized according to law.	Ste.-Croix, Switzerland
Fred H. Lenway & Co. Inc.	Corporation organized according to law.	San Francisco, Calif.
Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish 2d, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Herbert Higgins, Samuel L. Stedman.	Co-partners d/b/u the firm name and style of Carl M. Loeb, Rhoades & Company.	42 Wall Street New York, N. Y.
Maryland Trading Corporation	Corporation organized according to law.	Princess Anne, Md.
Munro Kincaid Mottla Inc.	Corporation organized according to law.	11 Melcher Street Boston, Mass.
Mandel Brothers Inc.	Corporation organized according to law.	North State Street Chicago, Ill.
Marble Supply Corporation of America	Corporation organized according to law.	211 East 113th Street New York, N. Y.
Monsanto Chemical Company	Corporation organized according to law.	St. Louis, Missouri

Schedule A, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Status	Place of Business
Monsanto Chemical Company	Corporation organized according to law.	St. Louis, Missouri
(2724)		
Marum Knitting Mills Inc.	Corporation organized according to law.	Lawrence, Massachusetts
Metasco Inc.	Corporation organized according to law.	401 Fifth Avenue New York, N. Y.
Mitropa Corporation	Corporation organized according to law.	50 Broadway New York, N. Y.
Miller Products Export Corp.	Corporation organized according to law.	29 Warren Street New York, N. Y.
Merino Wool Corporation	Corporation organized according to law.	79 Madison Avenue New York, N. Y.
Modern Exportation	Entity existing under the laws of the Kingdom of Belgium	Antwerp, Belgium
Harry Liebowitz	individual doing business as Modern Glass & Wire Supply Company	296 Broadway New York, N. Y.
Mercaderias Peruanas S. A.	Corporation organized according to law.	Lima, Peru
Meyerhans & Cie. S. A.	Corporation organized according to law.	Weinfelden, Switzerland
Etablissements Francois Masurel Freres	Corporation organized according to law.	Tourcoing, France
Norge Boats Inc.	Connecticut Corp.	Darien, Connecticut
John E. Murray and Charles S. Nicholson	Co-partners d/b/u firm name and style of Nicholson & Company	161 First Street Cambridge, Mass.
North & Central American Hide Corporation	Corporation organized according to law.	82 Wall Street New York, N. Y.
New Amsterdam Import Co. Inc.	Corporation organized according to law.	122 Chambers Street New York, N. Y.

Schedule A, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Status	Place of Business
Richard M. Ott & Sons, Inc.	Corporation organized according to law.	256 Summer Street Boston, Mass.
(2725)		
Otis McAllister & Co.	Calif. Corporation	310 Sansome Street San Francisco, Calif.
O'Neill Brothers Inc.	Corporation organized according to law.	Philadelphia, Pa.
Parker Machine Co. Inc.	Corporation organized according to law.	158 Pioneer Street Brooklyn 31, N. Y.
Paper Corporation of United States	New York Corporation	630 Fifth Avenue New York, N. Y.
Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie	Trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust	Boston, Mass.
Pohjola Insurance Company	Entity organized according to law.	Helsinki, Finland
William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell E. Longshore.	Co-partners d/b/u firm name and style of I. Reifsnyder Son & Co.	110 South Front Street Philadelphia 6, Pa.
Joseph Rosenthal's Sons Inc.	Corporation organized according to law.	190 West Berk Street Philadelphia, Pa.
S. Rosenfelder & Son Inc.	Corporation organized according to law.	Danbury, Connecticut
Reliance International Manufacturing Co.	Corporation organized according to law.	443 Broadway New York, N. Y.
Walter H. Rothschild Company, Inc.	Corporation organized according to law.	38 Park Row New York, N. Y.
S K F Industries Inc.	Corporation organized according to law.	Philadelphia, Pa.
Irving M. Sobin Co. Inc.	Corporation organized according to law.	72 Granite Street Boston, Mass.

Schedule A, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Status	Place of Business
Jos. Sultan & Sons Inc.	New York Corp.	16 West 40th Street New York, N. Y.
Paul A. Straub & Co. Inc.	Corporation organized according to law.	19 East 26th Street New York, N. Y.
(2726)		
E. Richard Schwabach, Julius Schure, N. W. Feingold, Paul D. Perutz, George J. Perutz, and Fred W. Perutz	Co-partners d/b/u firm name & style of Schabach & Company	60 Beaver Street New York, N. Y.
Christopher Smiles & Co. Inc.	Corporation organized according to law.	22 East 40th Street New York, N. Y.
F. Schumacher & Co.	Corporation organized according to law.	60 West 40th Street New York, N. Y.
George Scherr Co. Inc.	Corporation organized according to law.	200 Lafayette Street New York, N. Y.
William Steck & Co. Inc.	Corporation organized according to law.	39 Broadway New York, N. Y.
Standard Sales Steel Co. Inc.	Corporation organized according to law.	175 Fifth Avenue New York, N. Y.
J. Shore & Co.	Corporation organized according to law.	Chelsea, Mass.
R. K. Sterling and Maude A. Sterling	Co-partners d/b/u firm name and style D. L. Sterling & Sons	100 Hudson Street New York, N. Y.
A. Samyn Permandt	Entity existing under laws of Kingdom of Belgium	Antwerp, Belgium
Societe Des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.)	Corporation existing under laws of Kingdom of Belgium	Angleur, Belgium
Stein, Hall & Company, Inc.	Corporation organized according to law.	285 Madison Avenue New York, N. Y.
Switzerland General Insurance Company, Ltd.	Corporation organized according to law.	Zurich, Switzerland

Schedule A, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Status	Place of Business
William T. Newbold and James M. Reilly	Co-partners d/b/u firm name & style Nathan Trotter & Co.	24 State Street New York, N. Y.
F. H. Taussig	Individual	175 West 76th Street New York, N. Y.
The Travelers Fire Insurance Company	Corporation organized according to law.	Hartford, Connecticut
(2727)		
Touraine Flowers Inc.	Corporation organized according to law.	36 West 37th Street New York, N. Y.
United Hat Fur Cutting Company	Corporation organized according to law.	350 South Street Newark, N. J.
Bernhard Ulmann Co. Inc.	Corporation organized according to law.	30-20 Thomson Avenue L. I. C., N. Y.
Ullmann-Allied Overseas Associates, Ltd.	Corporation organized according to law.	131 West 30th Street New York, N. Y.
Union des Fabriques Belges de Textiles Artificiels S. A.	Corporation organized under the laws of the Kingdom of Belgium	Antwerp, Belgium
C. J. Van Houten & Zoon N. V.	Corporation organized according to law.	Weesp. Holland
Firma J. Van Beelen C. V.	Entity existing under laws of Kingdom of The Netherlands	Ijmuiden, Holland
Western Dairy Products Inc.	Corporation organized according to law.	San Francisco, Calif.
S. H. Waldstein Co. Inc.	Corporation organized according to law.	222 Summer Street Boston, Mass.
Wool Distributing Corporation	Corporation organized according to law.	253 Summer Street Boston, Mass.
Georg Wertheimer	Individual	Tangier, North Africa
W. W. Windle Company	Mass. Corporation	Millbury, Mass.

Schedule A, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Status	Place of Business
Rembert Wurlitzer	Individual	12 West 42nd Street New York, N. Y.
Theodore Willich, Albert Willich and Anton F. Dolce	Co-partners d/b/u firm name & style of Willick & Company	9 Park Place New York, N. Y.
David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin	Co-partners d/b/u firm name & style of Samuel Zeitlin's Sons	973 North 5th Street Philadelphia, Pa.
B. N. S. International Sales Corp.	Corporation organized according to law.	92 Liberty Street New York, N. Y.
W. L. M. Bensdorp Company	Corporation organized according to law.	89 Broad Street Boston, Mass.
N. V. Tweka Tricot-fabrieken	An entity Existing under laws of Kingdom of the Netherlands	Geldrop, Holland
(2728)		
Duesberg-Bosson Machines Textiles S. P. R. L.	A limited liability company existing under the laws of Belgium	Neerem, Belgium
Charles Censor	Individual	110 Riverside Drive New York, N. Y.
Garnindustrie G. M. B. H.	Limited liability company organized under laws of Germany	Munich
A/S Dansk Kodekstrakt Co., Aabenraa	Entity existing under Danish law.	Aabenraa, Denmark
Andels-Svineslagteriet i Kolding	Entity existing under Danish law.	Kolding, Denmark
United Nations	International organization established by charter of certain sovereign nations.	405 E. 42nd Street New York, N. Y.
Edward S. Blake and "John" Boyle (the name "John") being fictitious, the true given name of said person being unknown).	Co-partners d/b/u firm name & style of Blake & Boyle	201 E. 40th Street New York, N. Y.

SCHEDULE B, ANNEXED TO LIBEL AND COMPLAINT OF AMERICAN SMELTING & REFINING COMPANY, ET AL.

(2729)

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Mining Equipment Corp.—Rotterdam	645 ingots of Tin-Alloy of which Tin is component of chief value.	Order of American Smelting & Refining Co., notify same.—New York	American Smelting & Refining Co.
Asabel Ste. Ame. as Agents—Antwerp	7 cases worsted combers; 1 case textile machinery parts	Order of Atkinson Haserick & Company—Boston	Atkinson Haserick & Company
Edm. Van Meerbeek & Co. S. A. as agts. Antwerp	1 caisse Fil Carde Teint Simple Bout Pure Laine 11/12 N. M. (Woolen Worsted Yarn)	Order, notify Anglo Fabrics Co. Inc.—Boston	Anglo Fabrics Co. Inc.
S. A. Transaf as agents—Antwerp	26 lift bundles Angles	Order, notify Amerlux Steel Products Corp. Philadelphia	Frederick E. Aubel, Jr. and Frederick E. Aubel, III Co-partners d/b/u firm name & Style F. & E. Aubel

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
The American Express Company Inc. as agents—Antwerp	1 case Machinery (lathe), 1 case Machinery (lathe), 1 case Machinery (lathe), 1 case Machinery (lathe), 1 case Machinery (lathe) 2 cases machinery (spare parts)	Order of American Express Company New York	Olaf Ravndal, as Treas. of American Express Company
The American Express Company Inc. as agents—Antwerp	1 case Machinery (lathe), 1 case Machinery (lathe), 1 case Machinery (lathe), 1 case Machinery (lathe)	Order of American Express Company New York	Olaf Ravndal, as Treas. of American Express Company
Holstebro Svineslagteri, Holstebro. Aarhus with transshipment at Hamburg.	467 cases canned meat.	Order of Atalanta Trading Corp.—New York	Atalanta Trading Corp.
S. A. Sopro—Antwerp	200,000 kilos of crude Castor Seed Oil, 1st pressure in bulk.	Order, notify Archer-Daniels-Midland Company—New York	Archer-Daniels-Midland Company
(2730)			
Davum S. A. Belge as Agents Antwerp	12 packages Angles, 14 packages Squares-New Billet Basic Bessemer Steel Ordinary Quality.	Order of shipper, notify Ameurope Metals Inc. Boston	Ameurope Metals Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Van Duin & Co. Rotterdam	12 bags Cocoa Beans	Order, notify Ernst Adler Co. Inc.— New York	Ernest Adler Co. Inc.
S. A. Des Transports Simon Smits as agents—Antwerp	15 bales jute webbings	Order of American Overocean Corporation—Philadelphia	American Overocean Corporation
H. Klapwijk Contr. & Expeditiebedruf Rotterdam	747 ingots of Prime Western Zinc Brand V. M.	Order, notify the American Transport Union Corp.— New York	Associated Metals & Minerals Corp.
Carl Reinhard— Hamburg	73 cases cheese	Order of The Atlantic Works—Boston	Stanley Wallach
Carl Reinhard— Hamburg	78 cases cheese	Order of The Atlantic Works—Boston	Stanley Wallach
M. V. Handelmaatschappij Voor Wol & Zijde— Rotterdam	15 bales of wool noils	Order of National Shawmut Bank of Boston notify Beatty & Hyde Inc.—Boston	Beatty & Hyde Inc.
Andre Paternoster Antwerp	31 pressed bales of Cape Tops	Order, notify Bracht & Co. Inc.—Boston	Bracht & Co. Inc.
N. V. Handelsvereeniging Bolle & Schilthuis—Rotterdam	99,723 kilos of Dutch Castor Oil #1 in bulk.	Order of Guaranty Trust Company of N. Y. notify The Baker Castor Oil Company New York	The Baker Castor Oil Company

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Dobbertin & Kauffman—Hamburg	50 drums of Nickel Sulphate	Order of the National City Bank of N. Y. notify Browning Chemical Corporation.—Boston	Browning Chemical Corporation
Bell Telephone Manufacturing Company S. A.—Antwerp	1 case telephone material	Order of Federal Telephone & Radio Corporation—New York	Bell Telephone Manufacturing Company S. A.
N. V. Schenker & Co.'s Intern. Expeditie Rotterdam	5 cases of wire hoods for champagne bottles	Order of Budde & Westermann—New York	Budde & Westermann
Steinmann & Co. as agents—Antwerp	81 bales of Gunny Bagging (Scrap Bagging)	Order of The Irving Trust Co., notify D. Benedetto Inc.—New York	D. Benedetto Inc.
(2731)			
Kersten Hunik's Internationaal Transportbednij F. N. V., as agents Rotterdam	33 iron drums of vinyl cyanide	Wilson Export & Import Corporation New York	The Baloise Marine Insurance Company Ltd.
A. Samyn-Permandt, Verviers, as Agent Antwerp	5 bales of Noble N. Z. noils; 6 bales of Schlg. Austr. noils	Order of Second National Bank of Boston, notify Cordingley Company Inc.—Boston	Cordingley Company

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Plant-Owner
Natural Ltd. Basle Antwerp	7 bales wool noils	Order of Second National Bank of Boston, notify Cordingley Company Boston	Cordingley Company
A. Samyn-Permandt as Agent, Verviers Antwerp	6 bales Blousse Schlg. B. A. Lamb noils	Order of Second National Bank of Boston, notify Cordingley Company, Inc.	Cordingley Company
A. Samyn-Permandt, Verviers as Agent Antwerp	14 bales Schlg. Austral. noils	Order of Second National Bank of Boston, notify Cordingley Company, Inc. Boston	Cordingley Company
K. L. M. Royal Dutch Airlines Rotterdam	1 case aircraft engine	K. L. M. Royal Dutch Airlines—New York	Capital Airlines
Furness' Shipping & Agency Co. S. A. as agents Antwerp	1 case Milling-Drilling-Jigboring Machinery F. P. N.	Order of Columbia Export Co. Inc.—New York	Columbia Export Co. Inc.
S. A. Glaces et Verres (Glaver) Antwerp	23 cases of common window glass	Order of The Chase National Bank, notify Colonial Mirror & Glass Corp. New York	Colonial Mirror & Glass Corp.
S. A. Glaces et Verres (Glaver) Antwerp	28 cases Common Window Glass	Order of The Chase Natl. Bank, notify Colonial Mirror & Glass Corp.—New York	Colonial Mirror & Glass Corp.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
H. Datema as Agent—Rotterdam	18 cases of Bristles	Order of The Guaranty Trust Company of N. Y. New York	Frederick H. Cone & Co. Inc.
(2732)			
H. Datema as Agent—Rotterdam	7 cases of Bristles	Order of The Bank of New York and Fifth Avenue Bank New York	Frederick H. Cone & Co. Inc.
John Im Obersteg & Co. Ltd.—Rotterdam	1 case machinery n. o. s. & 1 case machinery n. o. s.	Order of Cosa Corporation, notify H. Schroeder Banking Corp.—New York	Cosa Corporation
Fasting & Co. N. V. Bremen	1000 bales of Horticultural Peat Moss	Order, notify Ezl. Dunwoody Co. Philadelphia	Ezl. Dunwoody Co.
Fasting & Co. N. V. Bremen	350 bales of Horticultural Peat Moss	Order, notify Ezl. Dunwoody Co. Philadelphia	Ezl. Dunwoody Co.
Huyser, Miller & Co. C. V.—Rotterdam	250 bags cocoa press cake	Order of Public Natl. Bank & Trust Company of N. Y. notify Middleton & Co., Ltd. a/c Dickersons Overseas Company—New York	Dickersons Overseas Company, a Division of The Dickerson Company, Inc.
J. H. Bachmann Bremen	50 bales Burlaps	Order of A. de Swaan Inc.—Boston	A. de Swaan Inc.
J. H. Bachmann Bremen	23 bales Burlaps	Order of A. de Swaan Inc.—Boston	A. de Swaan Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Walter Von Den Steinen—Hamburg	2 cases Bristles	Order, notify Delmey Trading Corporation New York	Delmey Trading Corporation
Intrapex N. V. Venlo Rotterdam	14 cases parts for meatchopping machines	Order of The Enterprice Mfg. Company of Pennsylvania—Philadelphia	The Enterprise Mfg. Company of Pennsylvania
Gebr. Hirdes Bremen	64 bales rayon waste	Order of Central Hanover Bank & Trust Company, notify A. L. Erlanger Company, Inc. Boston	A. L. Erlanger Company, Inc.
N. V. Handelmaatschappij Voor Wol En Zijde—Rotterdam	13 bales Wool Rags	Order of The Chase National Bank—New York	J. Eisenberg, Inc.
De Marex & Co. Bremen	700 paper bags of Magnesium Sulfate	Order of European Chem. Co. Inc., notify same New York	European Chemical Co. Inc.
Daher & Co., Antwerp as agents—Antwerp	15 bales combed wool	Order of Intercontinental Wool Company Boston	Wm. S. Febiger Co. and Inter-Continental Wool Company
(2733)			
S. A. Edmond Depaire, as Agents Antwerp	10 bales Wool Tops	Order, notify Intercontinental Wool Company—Boston	Wm. S. Febiger Co. and Intercontinental Wool Company

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
A. Samyn-Permandt, Verviers as Agent Antwerp	2 bales Noble N. Z. noils	Brown Brothers Harriman & Co. notify Robert S. Fish & Co. Inc. Boston	Robert S. Fish & Company, Inc.
Etablissements R. Castagnon & Co.—Bordeau via Rotterdam	100 casks Armagnac	Order of Chase Bank of New York, notify Federal Liquors Ltd. Boston	Federal Liquors Ltd.
A. Samyn Permandt as agents—Antwerp	17 bales Thread Waste	Order of First Natl. Bank of Boston notify Franklin & Co.—Boston	Lewis C. Franklin and Lewis C. Franklin Jr.
A. Samyn Permandt as agents—Antwerp	9 bales Thread Waste	Order of First Natl. Bank of Boston, notify Franklin & Co.—Boston	Lewis C. Franklin and Lewis C. Franklin Jr.
Van Kruchten & Co. as agents—Antwerp	2 cases mixed woolen rayon knitwear	Order of Dorf International, notify Frieman Knitwear Corp. New York	Frieman Knitwear Corp.
The American Express Company Inc. as shipper's agents Rotterdam	3 cases cotton rayon pieces goods	American Express Company—Boston	Federated Dept. Stores Inc., The F. & R. Lazarus & Company Division
Ste Danzas & Cie Antwerp	72 bales of raw dry rabbit skins	Order notify Fein & Co. Inc. New York	Fein & Co. Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Europa Frost Corporation, Neuer Fischereihafen, Hamburg-Altona Hamburg	680 packages of Ocean Perch 680/50 840 packages Cod Fillets 840/50	Order of shipper, notify Frosty Foods Company—New York	B. S. Bergesen and Jorgen Krag
Frank Ltd. Antwerp	13 cases Magnetos Vertex	Order of Davies Turner & Co., notify Griswold Mfg. Co. Philadelphia	Frank A. G.
Heinr. Ruppel & Sohn—Bremen	1 crate light metal-ware (bicycle parts)	Order Andrew Fisher Cycle Co. Inc. New York	Andrew Fisher Cycle Co. Inc.
Ag. Mar. A. Freyman & Van Loo S. P. R. L. as agents Antwerp	5 cases Linen Piece Goods	Order Fallani & Cohn Inc.— New York	Fallani & Cohn Inc.
Hanseatic Transport Gesellschaft Heinr. Bunger—Bremen	500 bales Peat Moss	Order Chase Natl. Bank, notify Garden Supply Sales Corp. Boston	Garden Supply Sales Corp.
(2734)			
Hanseatic Transport Gesellschaft Heinr. Bunger—Bremen	1,375 packages of peat moss	Order of Chase Natl. Bank, notify Garden Supply Sales Corp. New York	Garden Supply Sales Corporation
AB Meropa— Rotterdam	1000 paper bags Roller Process Whole Milkpowder	Order, notify D. L. Sterling & Sons Boston	Gotaas Export Corp.

Schedule B, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
A. Samyn Permandt as agents—Antwerp	14 bales Thread Waste	Order Rockland Atlas Natl. Bank of Boston, notify R. A. Hurley & Co. Inc.—Boston	Robert A. Hurley & Co. Inc.
N. V. Handelmaatsch-appij Voor Wol & Zijde—Rotterdam	7 bales wool noils	Order of First Natl. Bank of Boston, notify Richard W. Homer & Company—Boston	Richard W. Homer
N. V. Handelmaatsch-appij Voor Wol & Zijde—Rotterdam	7 bales wool Noils	Order Girard Trust Corn Exchange Bank notify A. H. Helmig & Co. Inc.—Phila.	A. H. Helmig & Co. Inc.
F. L. Vandriesche & Co.—Antwerp	50 bales of raw wool	Order of Frank B. Healis & Co. Inc. Philadelphia	Frank B. Healis & Co. Inc.
S. A. Edmond Depaire, as agents Antwerp	10 cases woolen yarn	Order notify Hohenberg Co. Inc. New York	Hohenberg Co. Inc.
S. C. Anemarit as Agents Antwerp	3 lifts bars Angles	Order of Industrial Sales Corporation Boston	Industrial Sales Corporation
John Im Obersteg & Co. Ltd. Rotterdam	60 bags Swiss locust bean gum	Order of Innis Speiden & Co. Boston	Innis, Speiden & Co. Inc.
Matthias Rohde & Jorgens Bremen	1 case iron chains	Order of Public Natl. Bank & Trust Co., notify same New York	Imperial International Corp.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Matthias Rohde & Jorgens Bremen	10 cases of iron chains	Order of Public Natl. Bank & Trust Co., notify Imperial International Corp. New York	Imperial International Corp.
Leopold Schoeller & Sohne, c/o C. E. Berg & Co. Bremen	1 Fardo of Tejidos de Lana	Imex S. A., notify same—Maracaibo, Venezuela (port of discharge from vessel New York)	Imex S. A.
Agence Maritime L. & J. Lalemant S. A. as agents Antwerp	1,493 ingots of tin	Order of shippers, notify Belgian American Banking Corporation— New York	Import-Export Industries Inc.
(2735)			
Agence Maritime L. & J. Lalemant S. A. as agents Antwerp	1,474 ingots of tin	Order of shippers, notify Belgian American Banking Corporation, New York	Import-Export Industries Inc.
Agence Maritime L. & J. Lalemant S. A. as agents Antwerp	1,501 ingots of tin	Order of shippers, notify Belgian American Banking Corporation, New York	Import-Export Industries Inc.
J. H. Bachmann Bremen	24 cases Baryt Paper	Order of Walter Reimerdes, notify International Expediters Inc. New York	International Expediters Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Agence Maritime Belgo Danoise S. A. as agents Antwerp	2 casks salted casings	Order of Interstate Casing Corp., notify same—New York	Interstate Casing Corp.
Hanseatic Transport Gesellschaft Heinr. Bunger Bremen	100 packages of Peat Moss	Order of the Harris Trust and Savings Bank, notify Keer, Maurer Co.—Philadelphia	J. M. Trading Corp.
Jacky Maeder & Co. Antwerp	2 cases Alarm-clocks and chimney clocks	Order of The Bank of N. T. Butterfield & Son, notify Donald Leach.—Hamilton, Bermuda (port of discharge from vessel New York)	Jacky Maeder & Co.
Robt. Jowitt & Sons Ltd.—Antwerp	19 bales of Australian Merino Schlumberger Tops; 9 bales Australian Merino Schlumberger Tops	West Coast Line as Agents (Consignees under West Coast Line's bills of lading Order of Messrs. Roldan & Cia. Ltda., notify Tejidos Leticia Ltd.) New York (Destination named in West Coast Line's bills of lading Buena Ventura).	Robt. Jowitt & Sons Ltd.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
S. A. Bureau D'Expedition de la Compagnie Commerciale Kreglinger (Kregspedi) Antwerp	6 bales Australian drycombed tops	Order, notify Sidney Stockwell—Boston	Kreglinger, Inc.
S. A. Bureau etc. (same as above)	17 bales drycombed Cape Tops	Order, notify Sidney Stockwell—Philadelphia	Kreglinger Inc.
Kaufmann's Huidenhandel N. V.—Rotterdam	10 bales Raw Lambskins	Order of H. M. Koenigswerther—New York	H. M. Koenigswerther Inc.
A. Samyn Permandt Antwerp	20 cases harmless chemicals & 1 drum harmless chemicals	Order of Mr. Albert Kremper—New York (destination named in Mexican Line Bill of Lading, Vera Cruz)	Albert Kremper
(2736)			
La Continentale S. A. de Transports Internationaux Antwerp	32 cases Music Boxes	Order of Hensel Bruckmann & Lorbacher Inc. notify same—New York	Lador S. A.
Agence Maritime L. & J. Lalemant S. A. as agents Antwerp	1,466 ingots of Billiton tin	Order of shippers New York	Fred H. Lenway & Co. Inc.
Van Nievelt Goudriaan & Co. Rotterdam	1,033 bags of Cold Water Soluble Quebracho Extract marked Tuposol	Order of Brown Brothers Harriman & Co. notify Carl M. Loeb Rhoades & Company—Boston	Carl M. Loeb et al. Co-partners Carl M. Loeb, Rhoades & Company

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Messrs. Van Wagenberg-Festen C. V.—Rotterdam	455 cartons Froz. Strawberry Puree, 150 cartons Froz. Climax Strawberries, 1,113 cartons Froz. Jucunda Strawberries, 548 cartons Froz. Jucunda Strawberries, 50 cartons Froz. Strawberries Jucunda M.	Order of Maryland Trading Corporation New York	Maryland Trading Corporation
A. Samyn-Permandt as Agents Antwerp	10 bales N. Z. French Noils	Brown Bros. Harriman & Co., notify Munro Kincaid Mottla, Inc.—Boston	Munro Kincaid Mottla, Inc.
S. A. Dumanex as Agents—Antwerp	5 bales of wool noils	Order Boston	Munro Kincaid Mottla, Inc.
S. A. Dumanex as Agents—Antwerp	26 bales of wool noils	Order Boston	Munro Kincaid Mottla, Inc.
A. Samyn-Permandt as Agents—Rotterdam	19 bales of wool noils	Order of Brown Bros. Harriman & Co., notify Munro Kincaid Mottla, Inc. Boston	Munro Kincaid Mottla, Inc.
A. Samyn-Permandt as Agents—Antwerp	43 bales of wool noils—not carbonized	Order of The First Natl. Bank of Boston notify Munro Kincaid Mottla, Inc.—Boston	Munro Kincaid Mottla, Inc.
The American Express Company Inc. Bremen	1 case toys	Order of American Express Company, notify same—Boston	Mandel Brothers Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Strecker & Co. as Agents Antwerp	92 Slabs Rough Marble	Order, notify Marble Supply Corporation of America New York	Marble Supply Corporation of America
Ocket & Vander Straeten, Antwerp, as Agents Rotterdam	2,000 bags of naphthalene	Order, notify T. D. Downing—New York, option Boston	Monsanto Chemical Company
Ocket & Vander Straeten, Antwerp, as Agents Rotterdam	10 bags of naphthalene	Order, notify T. D. Downing—New York, option Boston	Monsanto Chemical Company
(2737)			
Ocket & Vander Straeten, Antwerp, as Agents Antwerp	100 bags of naphthalene	Order—New York, option Boston	Monsanto Chemical Company
Ocket & Vander Straeten, Antwerp, as Agents Antwerp	505 bags of naphthalene	Order—New York, option Boston	Monsanto Chemical Company
Phs. Van Ommeren, N. V. as agents only	3,333 bags hot pressed Crude Naphthalene	Order, notify T. D. Downing Co.	Monsanto Chemical Company
Deutsche Grosstransport-Gesellsschaft m. b. H. Nachfolger Carl Press—Antwerp	3 cases "men all wool socks"	Order of Marum Knitting Mills Inc. Boston	Marum Knitting Mills Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Max Gruenhut as Agent Bremen	1 case Crockery 1 case Hardware 3 cases Wooden bldg. blocks 1 case Toys 12 cases Toys 2 cases Woodenware	Order of Metasco, Inc., notify The American Express Co.—Boston	Metasco, Inc.
Steinmann & Co. as agents Antwerp	1 bale Handwoven Dresses (100% Wool)	Order of Metasco Inc., notify same Boston	Metasco Inc.
Sembodja Malaya N. V. Rotterdam	1 case 50 Lenses Xenon 1:2,0 with copled view-range finder and 50 Lense Shades 36	Order, notify Mitropa Corp. New York	Mitropa Corporation
Van Nievelt Goudriaan & Co. Rotterdam	117 cartons rubber boots	Grace Line Inc. (Consignee named in bill of lading Sr. Regino Romero B.)—New York (Destination named in b/l Maracaibo)	Miller Product Export Corp.
Furness Transport N. V. (as forwarding agents)—Rotterdam	120 bales France drycombed top 64's	Order of the First Natl. Bank of Boston Boston	Merino Wool Corporation
Modern Exportation as Agents Antwerp	1 case Brass Frames for Ladies Handbags Polished	Order of Shipper, notify Lesco Ltd. New York	Modern Exportation
Modern Exportation as Agents Antwerp	8 cases Brass Frames for Ladies Handbags Polished	Order of Shipper notify Coronet Handbags, Inc.	Modern Exportation

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Modern Exportation as Agents Antwerp	1 case Brass Frames for Ladies Handbags Polished	Order of Shipper notify Walnut Novelty Co. Inc.	Modern Exportation
N. V. Schenecker & Co.'s Intern. Expeditie Rotterdam	1 case Replacement parts for Chandeliers	Order, notify Modern Glass & Wire Supply Company New York	Harry Leibowitz
(2738)			
J. H. Bachmann as agents for Grace Line—Bremen	12 cases of Toys	Order of Grace Line, Inc. (Consignee named in Grace Line b/l Bancode credito del peru) Notify Mercaderias Peruanas S. A. New York (destination named in Grace Line b/l Callao)	Mercaderias Peruanas S. A.
John Imobersteg & Company, Ltd. Rotterdam	40 bags of Swiss locust bean gum	Order of H. P. Rossiger & Company, Inc. New York	Meyerhans & Cie. S. A.
Steinmann & Co. as agents Antwerp	2 cases woolen yarn hand knitting (Files de laine)	Order of James Talcott, Inc. Factors notify Lep Transport Inc.—Philadelphia	Etablissements Francois Masurel Freres

Schedule B, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Steinmann & Co. as agents Antwerp	2 bales woolen yarn hand knitting (Files de laine)	Order of James Talcott, Inc. Factors notify Lep Transport Inc.—New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	2 bales woolen yarn hand knitting (Files de laine)	Order of James Talcott, Inc. Factors notify Lep Transport Inc.—New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	4 bales woolen yarn hand knitting (Files de laine)	Order of James Talcott, Inc. Factors notify Lep Transport Inc.—New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	2 cases woolen yarn hand knitting (Files de laine)	Order notify James Talcott, Inc. Factors New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	2 cases woolen yarn hand knitting (Files de laine)	Order notify James Talcott, Inc. Factors New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	2 cases woolen yarn hand knitting (Files de laine)	Order notify James Talcott, Inc. Factors New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	2 bales woolen yarn hand knitting (Files de laine)	Order notify James Talcott, Inc. Factors New York	Etablissements Francois Masurel Freres

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Steinmann & Co. SPRL as agents Antwerp (Shippers named in West Coast Line b/l H. D. Cottrell as agents)	6 cases woolen yarn hand knitting (Files de laine); 11 cases woolen yarn; and 1 case and 12 bales of woolen yarn.	West Coast Line, Inc. (consignees named in West Coast Line b/l as Follows: Guayaquil 1-Order notify Fabrico de Tejidos de Punto "Texval" Florencio N. Valencia. Callao b/l No. 1—Order notify Compania Textil Borelly and Fournier S/A. Callao b/l #2—Order notify Fabrica Nacional de Tejidos de Santa Catalina New York (Guayaquil & Callao)	Etablissements Francois Masurel Freres
(2739)			
W. H. R. Van Dam Inc.—Rotterdam	1 unpacked sailing Yacht with motor (protected by cradle)	Order of Norge Boat Inc.— New York	Norge Boats Inc.
Swiss Shipping Co. Ltd.—Antwerp	200 bags Foamless Pearl Glue	Order of First Natl. Bank of Boston—Boston	John E. Murray and Charles S. Nicholson
N. V. Transportmaatschappij Binneveld Schellen as Agents Rotterdam	15 cases of Box-calf Leather	Order of North & Central American Hide Corporation New York	North & Central American Hide Corporation

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
"NESKA" Bremen Bremen	750 bales of Horticultural Peat Moss—Burlap Wrapped	Order Hellenic Bank Trust Company, notify New Amsterdam Import Co. Inc. Boston, option New York, Phila.	New Amsterdam Import Co. Inc.
Jacques Driessen Antwerp	7 bales Schlemberger B/Ayres Coils	Order First Natl. Bank of Boston, notify Richard M. Ott & Sons Inc. Boston	Richard M. Ott & Sons, Inc.
Vinke & Co. as Agents Rotterdam	850 bags of coffee	Order of Otis McAllister & Co. Boston	Otis McAllister & Co.
Rodolphs Haller S. A. Bremen	39 bales of Cotton Waste	Order of Phila. Natl. Bank, notify O'Neill Bros. Inc. Philadelphia	O'Neill Brothers Inc.
Laagland N. V. Industrie & Handelmy Rotterdam	1 case S. T. C. Parts for Hercules 22" Shaper (F. 6320)	Parker Machine Co. Inc. New York	Parker Machine Co. Inc.
Blaauwvriesveem Belge S. A. as Agents Antwerp	70 Barrelled Rolls White Baryta Coated Paper	Order of Paper Corporation of United States, notify same. New York	Paper Corporation of U. S.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
B. I. De Vries & Co. Bremen	50 bales of New German Burlap	Order of the Natl. Shawmut Bank of Boston Boston	Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie
B. I. De Vries & Co. Bremen	25 bales of New German Burlap	Order of the Natl. Shawmut Bank of Boston Boston	Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie
Valio Co-Operative Butter Export Assoc. Hamburg	68 cases Emmental Cheese & 250 cases Cheese	Dr. V. O. Jarvenen New York	Pohjola Insurance Company
(2740)			
N. V. Handelmaatschappij Voor Wol & Zijde—Rotterdam	6 bales Wool Noils	Girard Trust Corn Exchange Bank, notify I. Reifsnyder Son & Co.—Phila.	William A. Longshore, et al. co-partners d/b/u I. Reifsnyder Son & Co.
Mining Equipment Corp.—Rotterdam	634 ingots of Tin-alloy of which Tin is component of chief value.	Order of Jos. Rosenthal, notify same. Philadelphia	Joseph Rosenthal's Sons Inc.
Mining Equipment Corp.—Rotterdam	949 ingots of Tin-alloy of which Tin is component of chief value.	Order of Jos. Rosenthal, notify same. Philadelphia	Joseph Rosenthal's Sons Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Kaufmann's Heidenhandel N. V.—Rotterdam	27 bales of Raw Hareskins	Order of The Grace Natl. Bank of N. Y., notify Freedman & Slater, Inc. New York	S. Rosenfelder & Son Inc.
J. H. Bachmann Bremen	4 casks Iron Chains	Order of Manufacturers Trust Co., notify Reliance Pet Supply Inc.—New York	Reliance International Mfg. Co.
J. H. Bachmann Bremen	3 casks Iron Chains	Order of Manufacturers Trust Co., notify Reliance Pet Supply Inc.—New York	Reliance International Mfg. Co.
Matthias Rohde & Jorgens—Bremen	10 cases Iron Chains	Order of Corn Exchange Bank Trust Company, notify Reliance International Mfg. Ltd. New York	Reliance International Mfg. Co.
Rene Migret Antwerp	54 bundles Steel Angles	Order of Manufacturers Trust Company notify Walter H. Rothschild & Co. New York	Walter H. Rothschild Company Inc.
J. H. Bachmann Bremen	37 cases of ball and roller bearings	Order of Phila. Natl. Bank, notify SKF Industries Inc. Philadelphia	SKF Industries Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Brusse & Sippel Rotterdam	100 drums Sodium Perborate	Order of Natl. Shawmut Bank of Boston, notify Irving M. Sobin Co. Inc. Boston	Irving M. Sobin Co. Inc.
N. V. Handelsmaatschapij "Alesco" Bremen	500 bags of Epsom Salts	Order, notify Irving M. Sobin Co. Inc.—Boston	Irving M. Sobin Co. Inc.
N. V. Handelsmaatschapij "Alesco" Bremen	180 jute bags Nitrate of Potash (Fertilizer)	Order, notify Irving M. Sobin Co. Inc.—Boston	Irving M. Sobin Co. Inc.
(2741)			
Ag. Mar. A. Freyman & Van Loo S. P. R. L. as Agents—Antwerp	16 bales of linen piece goods	Order of The Irving Trust Company New York	Jos. Sultan & Sons Inc.
J. H. Bachmann Bremen	5 cases hollow glassware	Order of Paul A. Straub & Co. Inc. New York	Paul A. Straub & Co. Inc.
J. H. Bachmann Bremen	2 cases hollow glassware	Order of Paul A. Straub & Co. Inc. New York	Paul A. Straub & Co. Inc.
Reyniers Freres Antwerp	27 bales Australian Schlumberger Noils	Order of Bankers Trust Company, notify Messrs. Schwabach & Co.—Boston	E. Richard Schwabach, et al, co-partners d/b/u Schwabach & Company

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Daher & Co. as Agents—Antwerp	25 bales of New Belgian Burlap	Order of Chemical Bank & Trust Company notify Christopher Smiles & Co. Inc.—New York	Christopher Smiles & Co. Inc.
A. Samyn Permandt as Agents Antwerp	4 cases Pure Linen Goods	Order of F. Schumacher & Co. New York	F. Schumacher & Co.
A. Samyn Permandt as Agents Antwerp	3 cases Pure Linen Goods	Order of F. Schumacher & Co. New York	F. Schumacher & Co.
Carl Prior Bremen	3 cases of Measuring Instruments	Order of George Scherr Co. Inc. New York	George Scherr Co. Inc.
A. Schrauwen Antwerp	59 bales of No. 1 Sound Bagging	Order of The Natl. City Bank of N. Y. notify William Steck & Co. Inc. New York	William Steck & Co. Inc.
Ed. Van Dijck as Agent—Antwerp	11 bundles of steel channels	Order of Trade Bank & Trust Company, notify Standard Sales Steel Co. Inc. Philadelphia	Standard Sales Steel Co. Inc.
Pijnenburg's Weverijen, N. V. Rotterdam	49 bales of Burlap	Order of J. Shore & Co.—Boston	J. Shore & Co.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
A. B. Meropa Rotterdam	1,000 paper bags Roller Process Whole Milkpowder	Order, notify D. L. Sterling & Sons Boston	R. K. Sterling and Maude A. Sterling
A. B. Meropa Rotterdam	1,000 paper bags Roller Process Whole Milkpowder	Order, notify D. L. Sterling & Sons New York	R. K. Sterling and Maude A. Sterling
(2742) Allied Creameries Ltd.—Rotterdam	760 strong paper bags Roller Process Whole Milkpowder	Order of The Natl. City Bank of N. Y. notify D. L. Sterling & Sons—New York	R. K. Sterling and Maude A. Sterling
A. Samyn Permandt as Agents—Antwerp	2 cases Baby Shawls	Order of Chemical Bank & Trust Co. notify S. Flomenhaft Inc.—New York	A. Samyn Permandt
Societe des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.) Antwerp	10 cases Cadmium in balls	Order, notify Steel Heddle Mfg. Co.—Phila.	Societe Des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.)
Societe des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.) Antwerp	10 cases Cadmium in balls; 10 cases Cadmium in rods	Order of Harmon Lichtenstein & Co. New York	Societe Des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.)
B. I. deVries & Co. Textiel N. V. Bremen	27 bales German Burlap	Order of Brown Bros. Harriman & Company—New York	Stein, Hall & Company, Inc.

Schedule B, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
B. I. deVries N. V. Textile Bremen	25 bales German Burlap	Order of Brown Bros. Harriman & Company—Boston	Stein, Hall & Co. Inc.
C. Blenk & Fert Rotterdam	38 tubs Swiss loaf cheese	Order of credit Suisse New York Agency, notify S. Stern Henry & Company—New York	Switzerland General Insurance Company Ltd.
Mining Equipment Corp.—Rotterdam	318 ingots of Tin-Alloy of which Tin is component of chief value.	Order of Nathan Trotter Co., notify same. New York	William T. Newbold and James M. Reilly
Van Nievelt Goudriaan & Co. Rotterdam	200 bags of Chemicals	Order of F. H. Taussig New York	F. H. Taussig
S. A. Dumanex Antwerp	50 bales Duvets (Down)	Order, notify Purofied Down Products Corporation—New York	The Travelers Fire Insurance Company
Carl Prior Bremen	1 case China	Order of Manuel Peck—New York	Touraine Flowers Inc.
Carl Prior Bremen	1 case China	Order of Mr. Max Brandes c/o Touraine Flowers Inc. New York	Touraine Flowers Inc.
Crowe & Co. S. A. as agents Antwerp	10 bales raw rabbit skins	Order of Public Natl. Bank & Trust Company—New York	United Hat Fur Cutting Company

(2743)

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Ag. Mar. A. Freyman & Van Loo. S. P. R. L. as Agents—Antwerp	24 cases Linen Piece Goods	Order of Messrs. Bernard Ulmann Co. Inc.—New York	Bernhard Ulmann Co. Inc.
A. Samyn Permandt as Agents—Antwerp	22 bales Wool Noils	Order of Ullmann-Allied Overseas Associates, Ltd. Boston	Ullmann-Allied Overseas Associates, Ltd.
Arthur Maes as Agent—Antwerp	147 bales staple fabre (Swina)	Order of Haemseth Kerner Corporation, notify Stonecutter Mills Corporation New York	Union des Fabriques Belges de Textiles Artificiels S. A.
C. J. Van Houten & Zoon N. V.—Rotterdam	500 bags cocoa powder 18/20-J (loose) New York	Order, notify C. J. Van Houten & Zoon, Inc. New York	C. J. Van Houten & Zoon N. V.
C. J. Van Houten & Zoon, N. V. Rotterdam	400 cartons cocoa powder "Gold Label" in tins; 500 cartons cocoa powder "Rona" (loose); 40 cartons cocoa powder "Suma" (loose); 25 bbls. cocoa powder "Rona" (loose); 100 bags cocoa powder "Rona" (loose); 60 bags cocoa powder "X F" (Extra Fine) (loose).	Order, notify C. J. Van Houten & Zoon Inc. New York	C. J. Van Houten & Zoon N. V.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
C. J. Van Houten & Zoon N. V. Rotterdam	300 bags cocoa powder 10/12% (loose)	Order, notify C. J. Van Houten & Zoon, Inc. New York	C. J. Van Houten & Zoon N. V.
Fa. J. van Beelen C. V.—Rotterdam	19 bales Manila sections of trawl-nets; 1 bundle steel floats; 8 bags Iron Shakles	Order of The Fulton Supply Company New York	Firma J. Van Beelen C. V.
Nationale Cooperatieve Zuivelverkoop-centrale Rotterdam	960 crates powdered whole milk	Order, notify J. H. Hobson Company Philadelphia	Western Dairy Products Inc.
S. A. Des Transports Simon Smits as Agents Antwerp	125 balles Dechets de Coton (Coton waste)	Chase Natl. Bank, notify S. H. Waldstein & Co.—Boston	S. H. Waldstein Co. Inc.
Societe Belge de Transports Louis Duforest snc as agents—Antwerp	21 bales Wool Tops	Order, notify Wool Distributing Corp. Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as agents—Antwerp	18 bales Wool Tops	Order, notify Wool Distributing Corp. Boston	Wool Distributing Corporation
(2744)			
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	36 bales of Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	9 bales of Wool Noils	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	68 bales Wool Tops	Order, notify Wool Distributing Corporation—Bostor	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	46 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	63 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	87 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	44 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	51 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	37 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	1 bale Scoured Wool	Order of shippers, notify Pistorino Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	28 bales Wool Noils	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	34 bales Scoured Cap Wool	Order, notify Pistorino Co. Ltd.—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	80 bales Scoured Cap Wool	Order, notify Pistorino Co. Ltd.—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	100 bales Greasy Cap Wool	Order, notify Pistorino Co. Ltd.—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	100 bales Greasy Cap Wool	Order, notify Pistorino Co. Ltd.—Boston	Wool Distributing Corporation

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	56 bales Wool Noils	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
(2745)			
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	150 bales of Scoured Wool	Order of shippers, notify Pistorino Boston	Wool Distributing Corporation.
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	45 bales of Scoured Wool	Order of shippers, notify Pistorino Boston	Wool Distributing Corporation.
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	192 bales of Scoured Wool	Order of shippers, notify Pistorino Boston	Wool Distributing Corporation.
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	8 bales of Scoured Wool	Order of shippers, notify Pistorino Boston	Wool Distributing Corporation.
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	41 bales of Wool Noils	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation.
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	30 bales of Scoured Wool	Order of shippers, notify Pistorino	Wool Distributing Corporation.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
P. van Doosselaere & Co. as agents Antwerp	7 bags of Used Postage Stamps	Order of H. E. Harris & Co.—Boston	Georg Wertheimer
A. Samyn Permandt as Agent—Antwerp	4 bales Schlumberger Australian Noils	Order of Merchants Natl. Bank of Boston notify W. W. Windle & Co.—Boston	W. W. Windle Company
A. Samyn Permandt as Agent—Antwerp	6 bales Wool Noils—not carbonized	Order of Merchants Natl. Bank of Boston notify W. W. Windle & Co.—Boston	W. W. Windle Company
A. Samyn Permandt as Agent—Antwerp	6 bales Schlumberger Australian Noils	Order of Merchants Natl. Bank of Boston notify W. W. Windle & Co.—Boston	W. W. Windle Company
A. Samyn Permandt as Agent—Antwerp	12 bales Schlumberger Australian Noils; 7 bales Willeyed Waste; 2 bales Montevideo Noils: 31 bales Carbonized Waste; 14 bales Schlumber Australian Noils; 30 bales Carbonized Waste	Order of Merchants Natl. Bank of Boston notify W. W. Windle & Co.—Boston	W. W. Windle Company
A. Samyn Permandt as Agent—Antwerp	23 bales Schlumberger Australian Noils	Order of Merchants Natl. Bank of Boston notify W. W. Windle & Co.—Boston	W. W. Windle Company
J. H. Bachmann Bremen	2 cases Musical Instruments	Order of Rembert Wurlitzer New York	Rembert Wurlitzer

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Van Schaardenburg & Co. N. V. Rotterdam	1,166 jute bags Brewer's Rice	Order, notify Willich & Co.	Theodore Willich, Albert Willich and Anton F. Dolce
(2746)			
Max Heudenfeld Hamburg	2 cases Bristles	Order, notify Samuel Zeitlin's Sons—Phila.	David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin
Kraft & Company N. V.—Rotterdam	100 cases cooked boneless and skinless hams in tins	Order B. N. S. International Sales Corp. Notify R. B. Wilcon Company—Boston	B. N. S. International Sales Corp.
Bensdorp N. V. Rotterdam	221 drums of cocoa powder	Order notify W. L. M. Bensdorp—Boston	W. L. M. Bensdorp Company
N. V. Tweka Tricot-fabrieken	17 bales pure wool swim suit cutting room waste	Order of Cleveland Trust Company. Notify L. S. Glauber New York	N. V. Tweka Tricotfabrieken
Arthur Maes as agent— Antwerp	2 cases spare parts for textile machinery	Order notify E. Sydney Stockwell for account of Duesberg Bosson of America, Inc. Boston	Duesberg-Bosson Machines Textiles S. P. R. L.
Crowe & Co. S. A. as agents Antwerp	1 case glassware	Order of Vandegrift Forwarding Company, Inc. New York	Charles Censor

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
J. H. Sachmann as agents for Grace Line (Shipper named in Grace Line b/l Matthias Rhode & Jorgens)—Bremen	14 cases cotton yarn	Grace Line, Inc. Notify same. (Consignee named in Grace Line b/l Banco Mercantile Cochambamba. Notify Gibbs Williamson Ltd. Antofagasta) New York (desination named in Grace Line b/l Antofagasta)	Garnindustrie G. N. B. H.
A/S Dansk Kodek-strakt Co., Aabenraa Aabenraa (Placed on "Black Gull" at Hamburg)	200 cases tinned hams	Danish Food Packers, Inc.—New York	A/S Dansk Kodekstrakt Co., Aabenraa
Andels-Svineslagter-iet i Kolding Kolding (placed on board "Black Gull" at Hamburg)	250 cases canned goods	Order notify Baltic Trading Company, Ltd.—New York	Andels-Svines-lagteriet i Kolding
Andels-Svineslagter-iet i Kolding Kolding (placed on board "Black Gull" at Hamburg)	250 cases canned goods	Order notify Baltic Trading Company, Ltd.—New York	Andels-Svines-lagteriet i Kolding

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Andels-Svineslagteriet i Kolding Kolding (placed on board "Black Gull" at Hamburg)	250 cases canned goods	Order notify Baltic Trading Company, Ltd.—New York	Andels-Svineslagteriet i Kolding
Andels-Svineslagteriet i Kolding Kolding (placed on board "Black Gull" at Hamburg)	250 cases canned goods	Order notify Baltic Trading Company, Ltd.—New York	Andels-Svineslagteriet i Kolding
La Continentale S. A. de Transports Internationaux—Antwerp	1 carton, 2 cases & 2 cartons printing paper	Order Hensel Bruckmann & Lorbacher, Inc. New York	United Nations
Strecker & Co. as agents Antwerp	3 crates Rough Marble Slabs	Order, notify Blake & Boyle—New York	Edward S. Blake & "John" Boyle (name "John") being fictitious, true name unknown

SCHEDULE C, ANNEXED TO LIBEL AND COMPLAINT OF AMERICAN SMELTING & REFINING COMPANY, ET AL.

(2747)

Claimant	Amount of Damages
American Smelting & Refining Co.	$ 26,500.00
Atkinson Haserick & Company	14,000.00
Anglo Fabrics Co Inc.	475.00
Frederick E. Aubel, Jr. and Frederick E. Aubel, III, co-partners d/b/u the firm name & style of F. & E. Aubel	3,500.00
Olaf Ravndal, as Treas. of American Express Company	20,000.00
Atalanta Trading Corp.	23,000.00
Archer-Daniels-Midland Company	57,500.00
Ameurope Metals, Inc.	4,000.00
Ernest Adler Co. Inc.	625.00
American Overocean Corporation	500.00
Associated Metals & Minerals Corporation	6,250.00
Stanley Wallach d/b/a The Atlantic Works	2,750.00
Beatty & Hyde, Inc.	4,500.00
Bracht & Co., Inc.	31,000.00
The Baker Castor Oil Company	52,500.00
Browning Chemical Corporation	4,100.00
Bell Telephone Manufacturing Company S. A.	350.00
Budde & Westermann	750.00
D. Benedetto Inc.	2,000.00
Baloise Marine Insurance Company, Ltd.	6,050.00
Cordingley Company	13,500.00
Capital Airlines	36,000.00
Columbia Export Co. Inc.	1,750.00
Colonial Mirror & Glass Corp.	4,000.00
Frederick H. Cone & Co. Inc.	11,250.00
Cosa Corporation	39,000.00

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
Ezl. Dunwoody Co.	$ 3,250.00
Dickersons Overseas Company, A division of The Dickerson Company, Inc.	12,500.00
(2748)	23,500.00
A. De Swaan Inc.	2,100.00
Delmey Trading Corporation	5,850.00
The Enterprise Manufacturing Company of Pa.	4,750.00
A. L. Erlanger Company Inc.	5,250.00
J. Eisenberg, Inc.	1,400.00
European Chemical Co. Inc.	28,500.00
Wm. S. Febiger Co. and Intercontinental Wool Company	1,000.00
Robert S. Fish & Co. Inc.	20,000.00
Federal Liquors, Ltd.	6,100.00
Lewis C. Franklin and Lewis C. Franklin, Jr. Co-partners d/b/u firm name & style of Franklin & Company	4,000.00
Frieman Knitwear Corporation	1,100.00
Federated Department Stores Inc., The F. & R. Lazarus & Company Division	11,750.00
Fein & Co. Inc.	14,000.00
B. S. Bergesen & Jorgen Krag, Co-partners d/b/u firm name & style of Frosty Foods Company	7,850.00
Frank A. G.	125.00
Andrew Fisher Cycle Co. Inc.	3,000.00
Fallani & Cohn Inc.	5,000.00
Garden Supply Sales Corporation	15,750.00
Gotaas Export Corp.	6,250.00
Robert A. Hurley & Co. Inc.	3,750.00
Richard W. Homer d/b/a Richard W. Homer & Company	

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
A. H. Helmig & Co. Inc.	$ 3,500.00
Frank B. Healis & Co. Inc.	8,000.00
Hohenberg Co. Inc.	7,250.00
Industrial Sales Corporation	450.00
Innis, Speiden & Co. Inc.	2,000.00
Imperial International Corp.	1.750.00
Imex S. A.	1,300.00
Import-Export Industries Inc.	— 420,000.00
(2749)	
International Expediters Inc.	13,000.00
Interstate Casing Corp.	11,000.00
J. M. Trading Corp.	350.00
Jacky Maeder & Co.	425.00
Robt. Jowitt & Sons Ltd.	33,000.00
Kreglinger, Inc.	18,500.00
H. M. Koenigswerther Inc.	15,000.00
Albert Kremper	300.00
Lador S. A.	16,500.00
Fred H. Lenway & Co. Inc.	30,000.00
Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish 2d, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Herbert Higgins, Samuel L. Stedman, Co-partners d/b/u the firm name and style of Carl M. Loeb Rhoades & Company	15,000.00
Maryland Trading Corporation	24,000.00
Munro Kincaid Mottla Inc.	42,500.00
Mandel Brothers Inc.	175.00

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
Marble Supply Corporation of America	$ 2,500.00
Monsanto Chemical Company	52,500.00
Monsanto Chemical Company	42,500.00
Marum Knitting Mills Inc.	6,250.00
Metasco, Inc.	6,250.00
Mitropa Corporation	1,950.00
Miller Products Export Corp.	2,150.00
Merino Wool Corporation	78,000.00
Modern Exportation	4,000.00
Harry Liebowitz, an individual doing business as Modern Glass & Wire Supply Company	125.00
(2750)	
Mercaderias Peruanas S. A.	2,500.00
Meyerhans & Cie. S. A.	1,300.00
Etablissement Francois Masurel Freres	26,500.00
Norge Boats Inc.	13,000.00
John E. Murray and Charles S. Nicholson, co-partners d/b/u the firm name & style of Nicholson & Company	3,750.00
North & Central American Hide Corporation	29,000.00
New Amsterdam Import Co. Inc.	2,150.00
Richard M. Ott & Sons, Inc.	2,150.00
Otis McAllister & Co.	52,500.00
O'Neill Brothers Inc.	5,500.00
Parker Machine Co., Inc.	100.00
Paper Corporation of United States	7,500.00
Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie, as Trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust	18,000.00
Pohjola Insurance Coompany	15,200.00

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr., and Russell E. Longshore, Co-partners d/b/u the firm name and style of I. Reifsnyder Son & Co.	$ 2,050.00
Jos. Rosenthal's Sons Inc.	65,000.00
S. Rosenfelder & Son Inc.	10,500.00
Reliance International Manufacturing Co.	2,250.00
Walter H. Rothschild & Company, Inc.	8,000.00
S K F Industries Inc.	6,000.00
Irving M. Sobin Co. Inc.	7,000.00
Jos. Sultan & Sons Inc.	6,500.00
Paul A. Straub & Co. Inc.	2,050.00
E. Richard Schwabach, Julius Schure, M. W. Feingold, Paul D. Perutz, George J. Perutz, Fred W. Perutz, co-partners d/b/u the firm name and style of Schwabach & Company	10,500.00
(2751)	
Christopher Smiles & Co. Inc.	7,000.00
F. Schumacher & Co.	6,900.00
George Scherr Co. Inc.	3,850.00
William Steck & Co. Inc.	1,750.00
Standard Sales Steel Co. Inc.	1,900.00
J. Shore & Co.	7,850.00
R. K. Sterling and Maude A. Sterling, Co-partners d/b/u the firm name and style of D. L. Sterling & Sons	45,000.00
A. Samyn Permandt	2,000.00
Societe Des Mines Et Fonderies De Zinc De La Vieille Montagne (S. A.)	50,000.00
Stein, Hall & Company, Inc.	8,500.00
Stein, Hall & Company, Inc.	6,250.00

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
Switzerland General Insurance Company, Ltd.	$ 17,250.00
William T. Newbold and James M. Reilly, co-partners d/b/u the firm name and style of Nathan Trotter & Co.	13,000.00
F. H. Taussig	2,850.00
The Travelers Fire Insurance Company	52,000.00
Touraine Flowers Inc.	800.00
United Hat Fur Cutting Company	4,250.00
Bernhard Ulmann Co. Inc.	19,000.00
Ullmann-Allied Overseas Associates, Ltd.	13,500.00
Union Des Fabrique Belges De Textiles Artificiels S. A.	21,000.00
C. J. Van Houten & Zoon N. V.	27,500.00
Firma J. Van Beelen C. V.	2,650.00
Western Dairy Products Inc.	40,500.00
S. H. Waldstein Co. Inc.	8,750.00
Wool Distributing Corporation	67,500.00
Wool Distributing Corporation	602,500.00
Georg Wertheimer (2752)	550.00
W. W. Windle Company	30,000.00
W. W. Windle Company	7,250.00
Rembert Wurlitzer	1,650.00
Theodore Willich, Albert Willich and Anton F. Dolce, Co-partners d/b/u the firm name and style of Willich & Company	21,026.00
David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, Co-partners d/b/u the firm name and style of Samuel Zeitlin's Sons	1,250.00
B. N. S. International Sales Corp.	6,250.00
W. L. M. Bensdorp Company	5,000.00
N. V. Tweka Tricotfabrieken	1,750.00

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
Duesberg-Bosson Machines Textiles S. P. R. L.	$ 5,000.00
Charles Censor	50.00
Garnindustrie G. M. B. H.	7,850.00
A/S. Dansk Kodekstrakt Co. Aabenraa	10,000.00
Andels-Svineslagteriet i Kolding	58,500.00
United Nations	550.00
Edward S. Blake and "John" Boyle (the name "John" being fictitious, the true given name of said person being unknown) Co-partners d/b/u the firm name and style of Blake & Boyle.	550.00
	$2,903,126.00

(2761)

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The answer of Black Diamond Steamship Corp., respondent (sued herein as Black Diamond Steamship Corporation), to the libel of American Smelting & Refining Company, et al., in an alleged cause of contract and non-delivery of cargo, civil and maritime, alleges upon information and belief:

First: Respondent denies knowledge or information

sufficient to form a belief as to the allegations contained in the First article of the libel.

Second: Respondent admits the allegations as to it contained in the Second article of the libel.

Third: Respondent admits that at the times referred to in the libel it was charterer of the motor ship "Black Gull," a general ship engaged in the carriage of merchandise on the high seas for hire between northern European ports and United States Atlantic ports, under a time charter dated September 3, 1949 between respondent, as charterer, and Skibs A/S Jolund, as owner, for the exact terms and provisions of which said time charter respondent respectfully refers to the original thereof, and except as so admitted respondent denies the remaining allegations in the Third article of the libel.

Fourth: Respondent admits that in June and July 1952 certain shippers whose names are set out in Schedule B attached to the libel herein delivered to said motor ship "Black Gull" at the ports of shipment mentioned in said schedule certain goods, or packages said to contain goods, contents and conditions of contents being unknown to respondent, and that respondent thereupon duly issued and delivered to said shippers bills of lading for the transportation thereof on the said motor ship "Black Gull", and delivery thereof at (2762) the respective ports of destination set out in said schedule, in consideration of agreed freights and pursuant to the terms and provisions of said bills of lading, which said bills of lading were signed on behalf of the master of the vessel and delivered to said shippers by agents of respondent, and

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

except as herein admitted respondent denies the remaining allegations of the Fourth article of the libel.

Fifth: Respondent admits that said shipments were placed on board the motor ship "Black Gull" at its expense and under the supervision of the master of the vessel; that thereafter having the said shipments on board, said vessel sailed from her last port of loading, and thereafter arrived at the Port of New York in tow, having become a total loss by reason of a fire which occurred while the vessel was at sea on July 18, 1952; and that as a consequence of said fire many of said shipments were not delivered at all, or were delivered damaged, and subject to liens and expenses because of loss or damage which resulted from said fire; except as herein admitted respondent denies the remaining allegations of the Fifth article of the libel.

Sixth: Respondent denies knowledge or information sufficient to form a belief as to the allegations of the Sixth article of the libel.

Seventh: Respondent denies on information and belief the allegations of the Seventh article of the libel.

Eighth: Respondent denies each and every allegation of the Eighth article of the libel, except that respondent admits that no part of the sum of $2,903,126 has been paid by it.

Ninth: Respondent admits the admiralty and maritime jurisdiction of the United States and of this Honorable

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

Court, (2763) but it denies the remaining allegations of the Ninth article of the libel.

Tenth: Respondent denies each and every other allegation of the libel not herein admitted or otherwise answered.

FURTHER ANSWERING, AND AS A FIRST SEPARATE AND COMPLETE DEFENSE, RESPONDENT ALLEGES:

Eleventh: All of the shipments referred to in the libel and the schedules annexed thereto were made subject to the provisions of certain bills of lading issued therefor, each of which said bills of lading contained, amongst others, the following provision:

> "Neither the carrier nor any corporation owned by, subsidiary to or associated or affiliated with the carrier shall be liable to answer for or make good any loss or damage to the goods occurring at any time, and even though before loading on or after discharge from the ship, by reason or by means of any fire whatsoever, unless such fire shall be caused by its design or neglect."

Twelfth: Any alleged loss of or damage to any of the said shipments which occurred while they were in the custody of the motor ship "Black Gull" or of respondent, were occasioned by reason or by means of a fire on board said vessel, and neither respondent nor the said vessel has any liability to libellants for such loss or damage.

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

FURTHER ANSWERING AND AS A SECOND SEPARATE AND COMPLETE DEFENSE, RESPONDENT ALLEGES:

Thirteenth: All of the shipments referred to in the libel herein and in the schedules annexed thereto were made subject to the provisions of certain bills of lading issued therefor, each of which said bills of lading contained among others the following provision:

> "This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any (2764) of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any terms of this bill of lading be repugnant to said Act to any extent such terms shall be void to that extent, but no further."

Fourteenth: Said Carriage of Goods by Sea Act, Section 4 thereof, among other provisions provides:

> "(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from (a) Act, neglect, or default of the master, pilot or the servants of the carrier in the navigation or in the management of the ship; (b) Fire, unless caused by the actual fault or privity of the carrier; (c) Perils, dangers, and accidents of the sea or other navigable waters; (d) Act of God; . . . (p) Latent defects not discoverable by due diligence; and (q) Any other cause arising without

the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier, nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage."

Fifteenth: Any alleged loss of or damage to any of the said shipments which occurred while in the custody of respondent or the motor ship "Black Gull" arose or resulted from one or more of the matters or exceptions set forth in the foregoing articles Thirteenth and Fourteenth hereof, and neither respondent nor the said vessel has any liability to libellants for such loss or damage.

FURTHER ANSWERING AND AS A THIRD SEPARATE AND PARTIAL DEFENSE, RESPONDENT ALLEGES:

Sixteenth: All of the shipments mentioned and described in the libel herein and in the schedules annexed thereto were made subject to the provisions of certain bills of lading issued therefor, which said bills of lading contained, among others, the following provisions:

"17. In case of any loss or damage to or in connection with goods exceeding in actual value $500, lawful money of the United States, per package, or, in case of goods not shipped in packages, per customary freight unit, the value of the goods shall be deemed to be $500 per package, or per unit, on which bases the freight is adjusted (2765) and the

carrier's liability, if any, shall be determined on the basis of a value of $500 per package or per customary freight unit, unless the nature of the goods and a valuation of higher than $500 shall have been declared in writing by the shipper upon delivery to the carrier, and inserted in this bill of lading and extra freight paid if required, and in such case if the actual value of the goods per package or per customary freight unit shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the carrier's liability, if any, shall not exceed the declared value.

• • • •

"Valuation of goods not shipped in packages but susceptible of being so shipped, shall not be greater under this paragraph than would be the case had they been shipped in packages.

"19. All agreements or freight engagements for the shipment of the goods are superseded by this bill of lading, and all of its terms, whether written, typed, stamped or printed are accepted and agreed by the shipper to be binding as fully as if signed by the shipper, any local customs or privileges to the contrary notwithstanding. Nothing in this bill of lading shall operate to limit or deprive the carrier of any statutory protection or exemption from or limitation of liability. . . ."

Seventeenth: None of the libellants herein, before shipment of the goods or packages mentioned in the libel or in the schedules annexed thereto, nor at any other time, declared the value of the goods so delivered by them for

transportation and carriage as in the libel mentioned, nor was any such value inserted in the bill of lading or bills of lading issued for such shipments.

Eighteenth: In the event that any liability is adjudged against respondent by reason of the matters and things alleged in the libel herein, the value of the shipments of goods alleged in the libel so claimed to have been damaged or undelivered should be restricted and limited in accordance with the provisions of the respective bills of lading issued therefor, and to not exceeding the sum of $500 per package, or per customary freight unit.

FURTHER ANSWERING AND AS A FOURTH SEPARATE AND DISTINCT DEFENSE, RESPONDENT ALLEGES:

Nineteenth: In and by virtue of Articles I and X of (2766) the International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of the Owners of Seagoing Vessels, in effect June 2, 1931, signed at Brussels, Belgium, August 25, 1924, it is provided as follows:

> "Article I. The liability of the owner of a seagoing vessel is limited to an amount equal to the value of the vessel, the freight and the accessories of the vessel, in respect of
>
> • • • •
>
> "(2) Compensation due by reason of damage caused either to cargo delivered to the master to be transported, or to any goods and property on board;

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

"(3) Obligations arising out of bills of lading;

"(4) Compensation due by reason of a fault of navigation committed in the execution of a contract."

* * * *

"Article X. Where a person who operates the vessel without owning it, or the principal charterer is liable under one of the heads enumerated in Article 1 or Article 7, the provisions of this Convention are applicable to him."

Twentieth: The motor ship "Black Gull" mentioned in the libel herein was, at the times stated in said libel, of Norwegian registry and owned by citizens and residents of the Kingdom of Norway.

Twenty-first: On July 18th, 1952, said motor ship "Black Gull" became a total loss as a result of a fire on the high seas, which said fire was not caused or contributed to by the fault, privity or neglect of said owner or of respondent, its agents or servants.

Twenty-second: In the event that any liability is adjudged against respondent by reason of the matters and things alleged in the libel, then respondent further prays that its liability be restricted and limited in accordance with the provisions of said International Convention (said Article I and X as hereinabove set forth).

FOR A FIFTH SEPARATE AND DISTINCT DEFENSE RESPONDENT ALLEGES:

Twenty-third: In and by virtue of Section 183 of Title 46 of the United States Code, and the Acts amendatory

(2767) thereof and supplemental thereto, it is provided as follows:

> "Section 183. Amount of Liability: Loss of life or bodily injury; Privity imputed to owner; 'Seagoing Vessel'.
>
> "(a) The liability of the owner of any vessel whether American or foreign for any . . . loss or destruction by any person of any property, goods or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in Sub-section (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending. . . ."

Twenty-fourth: The motor ship "Black Gull" mentioned in the libel herein was, at the times stated in said libel, of Norwegian registry and owned by citizens and residents of the Kingdom of Norway.

Twenty-fifth: On July 18th, 1952, said motor ship "Black Gull" became a total loss as a result of a fire on the high seas, which said fire was not caused or contributed to by the fault, privity or neglect of said owner or of respondent, its agents or servants.

Twenty-sixth: In the event that any liability is adjudged against respondent by reason of the matters and things alleged in the libel, the respondent further prays

that its said liability be restricted and limited in accordance with said Section 183 of the United States Code as hereinabove set forth.

FURTHER ANSWERING AND AS A SIXTH SEPARATE AND DISTINCT DEFENSE RESPONDENT ALLEGES:

Twenty-seventh: On or about September 3, 1949, respondent chartered from the owner, Skibs A/S Jolund, the vessel M/S "Black Gull", as time charterer, for the transportation of freight between northern European ports and United States Atlantic ports.

(2768)

Twenty-eighth: In and by virtue of said time charter party it was provided as follows:

> "1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew, shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.
>
> "8. That the Captain shall prosecute his voyages with the utmost dispatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mate's or Tally Clerk's receipts.

"24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled 'An Act relating to Navigation of Vessels, etc.' in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both of which are to be included in all bills of lading issued hereunder:

"U. S. A. Clause Paramount

"This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any terms of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

• • • •

"26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account."

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

Twenty-ninth: If there is any liability by reason of the matters and things mentioned and described in the (2769) libel herein said liability is that of said Skibs A/S Jolund, pursuant to the terms and provisions of said charter party and all such liability should be borne by said Skibs A/S Jolund and not by this respondent.

Thirtieth: All and singular the premises are true.

Wherefore, respondent prays that the libel herein be dismissed with costs.

Pyne, Lynch & Smith
Proctors for Respondent
116 John Street
New York 38, N. Y.

(Verified December 30, 1953.)

Docket Entries in Verbeeck, et al.

(N)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Ad. 178-380

MARIA ANGELINA VERBEECK, MAURICE VERBEECK, SIMONE VERBEECK and LEO VERBEECK

vs.

BLACK DIAMOND STEAMSHIP CORPORATION and BLACK DIAMOND LINES, INC.

DATE	
July 17-53	Filed Libel & stip. for costs ($100. Indemnity Insur. Co. of N. A.)
July 17-53	Issued citation ret. 7/28/53.
July 21-53	Filed citation & return, served defts 7-20-53.
July 31-53	" notice of appearance.
July 3-53	" stip. for respondent's costs ($100. Natl. Surety Corp.)
June 25-54	" notice of motion on exceptions Ret. 6/29/54.
July 27-54	Memo. endorsed on notice of motion filed 6/25/54. Exceptions overruled. Bicks J.
July 30 54	Filed interrogatories (Also in A178-342, A178-370, & 173-350).
Aug. 4-54	" notice of motion to reargue motion on exceptions. Ret. 8/10/54.
Aug. 5-54	" order overruling exceptions. Bicks, J.
Sep. 14-54	Memo. endorsed on notice of motion filed 8-4-54. Respectfully referred to Judge Bicks, Edelstein, J.

Docket Entries in Verbeeck, et al.

DATE	
Nov. 22-54	Filed stip. and order substituting Dow & Symmers in place of Pyne Lynch & Smith as proctors for Black Diamond SS Corp, Clerk. (Filed under A 173-350)
(O)	
Dec. 8-54	Memo. endorsed on exceptions to libel filed 6/25/54. Motion for reargument granted, original determination is adhered to. Bicks, J.
Dec. 20-54	Filed order granting motion for re-argument of exceptions, etc.; that respondents file their answers to libel. Bicks, J.
Jan. 5-55	" notice of motion re: order requiring libellants to further answer the propounded interrogs. Ret. 1/11/55. (Also in A178-342, A178-370 and A173-350).
Jan 17 1955	Special pre-trial before Knox, Ch. J. Hearing held & adjd to 1/31/55.
Jan. 25-55	Memo. end. on motion papers filed 1/5/55. Motion disposed of as indicated upon argument. Submit order. Bicks, J. (Also in A178-342, A178-370 and A173-350).
Jan 31 1955	On call of special pre-trial before Knox, Ch. J. Hearing adjd to 2/14/55.
Feb 14 1955	On call of special pre-trial before Knox, Ch. J. Hearing adjd to 3/17/55.
Mar. 8-55	Filed consent & order sustaining exceptions to respt's answers or failure to answer certain respt's. interrogs.; that liblts. answer respt's. interrogs. within ten days, etc., etc., Bicks, J. (Filed under A178-342).

Docket Entries in Verbeek, et al.

DATE		
Mar 17 1955	Special pre-trial before Knox, Ch. J. Hearing held. Case marked off Pre-trial Calendars.	
May 13-55	Filed	answer of Black Diamond Steamship Corp.
May 26-55	"	note of issue for trial.
Sep 1 1955	Filed	notice of non-readiness for trial
Sep 1 1955	Filed	notice of non-readiness for trial
Dec. 23-55	"	order that commission issue to Rotterdam, Kingdom of The Netherlands. Walsh, J. (Filed in A178-342).
Dec. 29-55	"	notice of motion to revoke calendar dispositions etc. Memo. endorsed. Motion granted as indicated. Weinfeld, J. (Filed in A 174-34)
Dec. 29-55	"	affidavit and order revoking calendar dispositions etc. Weinfeld J. (Filed in A 174-34)
Dec. 29-55	"	affidavit of Daniel L. Stonebridge. (Filed in A174-34)
Jan. 12-56	"	direct interrogs. propounded to Johannes Adrianus Driesprong. (Filed in A178-342).
Jan. 12-56	"	direct interrogs. propounded to Pieter Spaanderman. (Filed in A178-342)
Feb. 6-56	Before Dimock, J. Trial begun. (Consolidated for trial with A174-34, A178-342, A178-370).	
Feb. 7-56	Trial continued.	
Feb. 8-56	" "	Libelant and Passenger claimant rest.

(P)

Feb. 9th, 14th, 15th, 16th, 17th, 21st, 23rd, 24th and 27th. Trial continued.

Docket Entries in Verbreck, et al.

DATE		
Feb. 28-56	Trial concluded. Decision reserved.	
Mar. 22-56	Filed	Record of Proceedings of Feb. 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27, 28, 1956. (Filed in A178-342).
May 16-56	Filed	Opinion #22617. Dimock, J. Petition for exoneration granted and libelants recovery denied. (Filed in A174-34).
May 25-56	"	notice of motion re: to strike and delete as indicated. Ret. 5/29/56. (Filed in A174-34) and in 3 other cases.
July 18-56	"	amended memorandum (Opinion #22,-813) Dimock, J. (Filed in A 174-34)
July 23-56	"	second amended memorandum (Opinion #22,829) Dimock, J. (Filed in A 174-34)
July 27-56	"	proposed findings of fact and conclusions of law with notations on the margins by Judge Dimock. (Filed in A 178-370)
July 27-56	"	proposed findings of fact and conclusions of law with notations on the margins by Judge Dimock. (Filed in A 174-34)
Oct. 4-56	"	consent order for findings of fact and conclusions of law. Dimock, J. (Filed in A.174-34 Also in A178-342, A.178-370)
Nov. 28-56	Filed	bill of costs and final decree. Libel dismissed and resps. to recover sum of $34. costs taxed. Dimock, J.

(2908)

Libel and Complaint of Maria Angelina Verbeeck, et al.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The Libel and Complaint of Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck—against—Black Diamond Steamship Corporation and Black Diamond Lines, Inc., in a cause of death on the high seas, alleges and respectfully shows to this Honorable Court, upon information and belief, as follows:

First: At all the times hereinafter mentioned, libellants were, and they now are, subjects of the Kingdom of Belgium, residing at Boechout, Antwerp, Belgium. Claimant Maria Angelina Verbeeck is the surviving widow of Joseph Antony Verbeeck, deceased, and claimants Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck are surviving children of said decedent. Decedent Joseph Antony Verbeeck left surviving him, no wife, husband, parent, child, or other dependent relative excepting the libellants hereinabove claimed.

Second: At all said times, respondents Black Diamond Steamship Corporation and Black Diamond Lines, Inc. were, and they now are, corporations duly organized, created and existing according to law, with an office and place of business at No. 39 Broadway, City, County and State of New York, within this District.

Third: At all said times respondents were the charterers of the steamship "Black Gull", which at all said times was operated in their service between the ports of

Bremen, Hamburg, Rotterdam, Antwerp, Belgium and the ports of New York, Boston and Philadelphia.

(2909)

Fourth: On July 18, 1952, decedent Joseph Antony Verbeeck was a member of the crew of the M. S. "Black Gull" serving aboard her in the capacity of mess boy. On that date, a fire broke out on board said M. S. "Black Gull" on the high seas, and as a result of said fire, decedent Joseph Antony Verbeeck lost his life. The said fire resulted from the willful and gross negligence of respondents, among others, in that they caused or permitted the said steamship to be, or to become an unsafe place for said decedent to work, and in that they failed to exercise due care to maintain said steamship in a safe condition.

Fifth: Said fire and the consequent death of decedent Joseph Antony Verbeeck were not in any degree caused by any fault, neglect or want of care of decedent or of libellants, but were caused by the wrongful acts, neglect and default and by the willful and gross negligence of respondents, their agents and servants, among others.

Sixth: At all times herein mentioned it was, and it now is the law of the Kingdom of Norway, that an action is maintainable against any corporation which by wrongful acts, neglect, or default, shall have caused the death of any person. By the said law of the Kingdom of Norway, such action may be brought by, and for the benefit of, the spouse and children of the person whose death shall have been caused, and shall be brought by them. A copy of a translation of the pertinent provisions of said law, which is known as "An Act concerning the entry into force of the General Civil Penal Code", is annexed hereto, marked Exhibit "A", and made a part hereof. The said act was, at all the times mentioned in this claim, and still is, in

force in the Kingdom of Norway, and extended and still extends in its operation to all deaths occurring on or caused by Norwegian vessels on the high seas.

(2910)

At all the times mentioned in this libel, it was, and now is, the law of the United States of America, that "whenever a right of action is granted by the law of any foreign state, on account of death by wrongful act, negligence or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the Courts of the United States, without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding". (Title 46 U. S. C., Section 764)

Seventh: The M. S. "Black Gull" was a vessel of Norwegian registry.

Eighth: By reason of the death of said decedent caused as aforesaid, libellants have been deprived of the reasonable expectation of pecuniary benefit and have suffered and sustained damage in the sum of $22,500., as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

Ninth: All and singular the premises are true within the Admiralty and Maritime jurisdiction of the United States and this Honorable Court.

WHEREFORE, libellants pray:

1. That process in due form of law, according to the course and practice of this Court in causes of Admiralty and Maritime jurisdiction, may issue against the said respondents, Black Diamond Steamship Corporation and

Black Diamond Lines, Inc. citing them to appear and answer on oath all and singular the matters aforesaid.

2. That the Court will order, adjudge and decree that the said respondents pay to the libellants the damages (2911) suffered by each of them, together with interest thereon, and their costs and disbursements.

3. And that libellants have such other and further relief in the premises as in law and justice they may be entitled to receive.

Bigham, Englar, Jones & Houston
Proctors for Libellants
Office & P. O. Address
99 John Street
New York 38, N. Y.

(Verified July 16, 1953.)

(2912)

EXHIBIT A, ANNEXED TO LIBEL AND COMPLAINT OF MARIA ANGELINA VERBEECK, ET AL.

Translation from Norwegian.

Certain provisions concerning damages included in the Norwegian Act of May 22, 1902, No. 11, known as the "Act concerning the Entry into Force of the General Civil Penal Code".

Section 19.

If any person has caused any injury to the body or limbs or to the health of another, or if he has infringed his personal liberty, and if the wrongdoer is liable in damages according to any other principles of law, he shall—besides indemnifying the injured party for the injury which he has suffered—also compensate him for any impairment of his future earning capacity, to such extent as the Court may consider to be fair and reasonable having regard to the degree of negligence and any other circumstances involved.

If the act concerned has been committed wilfully or by gross negligence, the Court may also order the wrongoer to pay to the injured party such amount of money as may be considered fair and reasonable, by way of compensation for personal pain and suffering or for any other injury of a non-economic nature which has been caused by the act concerned.

The provisions of the first and second paragraphs of this section shall also apply to any person who has committed an offence according to sections 168, 169, 191-196, 201, 210, or 217-221 of the Penal Code.

Exhibit A, Annexed to Libel and Complaint of Maria Angelina Verbeeck, et al.

Section 20.

In the event that the act concerned has caused the death of another person, the person who is liable in damages shall pay to the person responsible for the burial the costs incurred thereby.

Section 21.

If, in consequence of the death which has been caused any person is deprived of his supporter, the person who is (2913) liable in damages shall be ordered to indemnify the dependent for the loss which he is considered to suffer as a result thereof, to such extent as is held by the Court to be just and reasonable having regard to the degree of negligence and any other circumstances involved.

If the death has been caused wilfully or by gross negligence, the Court may also award the spouse, children or parents of the person killed such compensation as provided in the second paragraph of section 19.

Section 28.

The right to recover damages shall lapse after a period of 3 years; provided, however, that the period—if the claim has resulted from a punishable offence—shall be 10 years from the date when the person wronged became aware of the injury and of the identity of the person responsible for it.

If the claim for damages has resulted from a punishable offence, the claim is in any event recoverable in connection with any criminal proceedings in which the

wrongdoer is sentenced. If no decision is made by the Court with regard to a claim for damages submitted during the criminal proceedings, the provisions of the second paragraph of section 12 of the Statute of Limitations of July 27, 1896, shall apply.

The right of seizure according to section 36 of the Penal Code is not subject to prescription.

Correct translation certified.
Oslo, January 5, 1953.

(signed) J. Wulfsberg
J. Wulfsberg
(Authorized translator)

SEAL

(2934)

Answer of Black Diamond Steamship Corp. to the Libel and Complaint of Maria Angelina Verbeeck, et al.

To the Honorable the Judges of the United States District Court for the Southern District of New York.

The Answer of Black Diamond Steamship Corp. to the Libel and Complaint of Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck against Black Diamond Steamship Corp. and Black Diamond Lines, Inc., in a cause of death on the high seas, alleges and respectfully shows to this Honorable Court, upon information and belief, as follows:

First: Denies information sufficient to form a belief as to the allegations contained in Article First of the Libel.

Answer of Black Diamond Steamship Corp. to the Libel and Complaint of Maria Angelina Verbeeck, et al.

Second: Admits the allegations contained in Article Second of the Libel so far as they apply to Black Diamond Steamship Corp. only.

Third: Admits the allegations contained in Article Third of the Libel.

Fourth: Denies each and every allegation contained in Article Fourth of the Libel, except, admits that on July 18, 1952, Joseph Anthony Verbeeck was a member of the crew of the M/S "Black Gull" and that a fire broke out on board on the high seas as a result of which fire decedent Joseph Anthony Verbeeck lost his life.

Fifth: Denies each and every allegation contained in Article Fifth of the Libel.

Sixth: Denies information sufficient to form a belief as to the allegations of Article Sixth of the Libel.

Seventh: Admits the allegations contained in Article Seventh of the Libel.

(2935)

Eighth: Denies the allegations contained in Article Eighth of the Libel.

Ninth: Denies each and every allegation contained in Article Ninth of the Libel, except, admits the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Answer of Black Diamond Steamship Corp. to the Libel and Complaint of Maria Angelina Verbeeck, et al.

As and for a First, Separate and Complete Defense

Tenth: Alleges, upon information and belief, that libellants have received full and complete compensation allowed seamen's dependents under Norwegian law from the appropriate compensation agency.

As and for a Second, Separate and Complete Defense

Eleventh: Upon information and belief, whatever injuries and damages were sustained by libellants, if there were any, were caused in whole or in part or were contributed to by reason of the carelessness, negligence and want of care on the part of the deceased, Joseph Anthony Verbeeck, and not through any carelessness, negligence or want of care on the part of respondent, its agents, servants or employees; and, if any carelessness, negligence or want of care other than that of the deceased, Joseph Anthony Verbeeck, caused or contributed to the said alleged injuries and damages, it was the carelessness, negligence and want of care on the part of some third person, firm or corporation, their agents, servants or employees over whom respondent had no control, for whose carelessness, negligence and want of care the respondent, its agents, servants or employees is not and was not responsible.

(2936)

Wherefore, respondent prays that the libel and complaint be dismissed with costs.

Dow & Symmers
Proctors for Respondent
70 Pine Street
New York 5, New York

(Verified May 12, 1955.)

Testimony

(1)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A. 174-34

In the Matter

of the

Petition of SKIBS A/S JOLUND, in a cause of exoneration from and limitation of liability for damages arising out of a fire on board the "Black Gull" on July 18, 1952.

A. 178-370

WURTTEMBERGISCHE UND BADISCHE VEREINIGTE VERICHERUNGS-GESELLSCHAFTEN A. G.

vs.

BLACK DIAMOND STEAMSHIP CORPORATION and BLACK DIAMOND LINES INC.

A. 178-342

AMERICAN SMELTING & REFINING COMPANY, ATKINSON HASERICK & CO., ANGLO FABRICS COMPANY, et al.,

vs.

BLACK DIAMOND STEAMSHIP CORPORATION and BLACK DIAMOND LINES, INC.

A. 178-380

MARIA ANGELINA VERBEECK, MAURICE VERBEECK, SIMONE VERBEECK and LEE VERBEECK.

vs.

BLACK DIAMOND STEAMSHIP CORPORATION and BLACK DIAMOND LINES, INC.

Appearances

Before: Hon. Edward J. Dimock, *District Judge.*

(2) • • •

Appearances:

Pyne, Brush, Smith & Michelsen, Esq.,
Proctors for Skibs A/S Jolund;
Warner Pyne, Esq., and
Dudley C. Smith, Esq., of Counsel.

Bigham, Englar, Jones & Houston, Esqs.,
Proctors for libelants, cargo claimants and death claimant;
Henry N. Longley, Esq., and
John W. R. Zisgen, Esq., of Counsel.

Thomas H. Walker, Esq.,
Proctor for Claimant;
William J. O'Brien, Esq., of Counsel.

Abberley, Kooiman & Amon, Esqs.,
Proctors for seven passengers;
John J. Abberley, Esq., and
Frank Marcellino, Esq., of Counsel.

Dow & Symmers, Esqs.,
Proctors for Black Diamond Steamship Corp.;
Daniel W. Stonebridge, Esq., and
Raymond W. Mitchell, Esq., of Counsel.

Barron, Rice & Rockmore, Esqs.,
Proctors for Werner S. Brunn, claimant;
Jerome L. Reinstein, Esq., of Counsel.

• • • •

(47) • • •

HUBERT HOLLAAR, called as a witness on behalf of the libelants, having been first duly sworn, testified as follows:

Direct examination by Mr. Zisgen:

(48)

Q. Where do you live, Captain? A. In Rotterdam, in the Netherlands.

Q. You are a Dutch National, are you not? A. I am.

Q. And you have come here just for this trial? A. I do.

Q. By whom are you employed? A. By the Black Diamond Steamship Corporation of New York.

Q. How long have you been in their employ, Captain? A. Since September, 1930, with the interruption of the war years when connections were severe between the U. S. and Netherlands.

Q. When you were first employed by Black Diamond Steamship Corporation what was your position? A. I was port captain in the Port of Rotterdam.

Q. And did you thereafter acquire a different position? A. I did.

Q. And when was that? A. I couldn't exactly state but within about two years after I come into the employ of Black Diamond Lines I became marine superintendent, European marine superintendent covering their other port, which at that time was Antwerp, Belgium, only.

(49)

Q. Are you still their European marine superintendent? A. I am.

Q. And were you in June and July of 1952? A. I was.

Q. As of June and July, 1952, what European ports were under your supervision as European marine superintendent? A. That was the ports of Hamburg, Bremen, Rotterdam and Antwerp.

Q. And as of that time, Captain, what in general was the business of Black Diamond Steamship Corporation? A. The Black Diamond was maintaining a regular liner service, carrying cargo and a limited number of passengers on their vessels from these European ports mentioned to the east coast ports in the United States: Boston, New York, Philadelphia, Baltimore and Norfolk.

Q. And how frequently did Black Diamond Lines in June and July 1952 offer sailings from European ports? A. It was a weekly service.

Q. That is, one ship a week? A. One ship a week.

Q. And how long had that been true prior to (50) July in 1952? A. I cannot recall exactly because we have had various changes in our schedule, but I should say it would be about since 1949 when we acquired the Norwegian flag vessels to operate our service.

Q. And did those Norwegian flag vessels include the Black Gull? A. It did.

Q. And then from 1949 until July 1952 she was operated in that service, was she not? A. Well, I am not entirely clear on this point because the Black Gull was a new ship acquired by Messrs. Herlofsen of Oslo, and I really don't recall exactly the date when the vessel made her maiden trip.

Q. Well, was it sometime prior to 1951, Captain? A. In any case.

Q. Now, as European marine superintendent, what were your duties generally? A. My duties in general were to aid my shippers, our agents, our masters and officers of the vessel in an efficient operation of the line, and complying with the wishes of the shippers with regard to the destinations of their cargoes; to see that these cargoes were given the proper care and attention (51) with regard to the agents.

I did more or less act as arbitrator, you might say, between those different agents whenever problems arose as

to space available or dead weight available on the ships, in order to see that each and every agent got a fair deal as far as the maintenance of the schedule is concerned, so that the vessels would call at their ports as closely to the advertised dates as circumstances would permit.

That, in general, I would say describes what my duties are.

Q. Now, getting down from the general to the specific, Captain Hollaar, and dealing particularly with the westbound voyages, when did you first step into the picture with respect to any intended westbound voyage? A. From the time that the vessel in its schedule approached the port of Hamburg, which was our first loading port, I was given information by the various agents as to the advance bookings of cargo then on their books in all the ports, and it was our practice, prior to departure from Rotterdam, to inform the masters of the vessels in writing, amongst others, of any cargoes of a special nature that the (52) vessel might have or would have to load on her westbound voyage, and consequently it follows that at that time when there was any specific reason to talk points over with the captain, such was then done prior to his departure from the German ports.

Q. You said "it was our custom," Captain. By that what do you mean? A. Well, when I say "our" I probably refer to the company as a whole.

Q. Were you or were you not referring to yourself when you said it was your custom? A. Yes, I certainly was involved in this "our."

Q. Now, when you said prior to the vessel's departure from Rotterdam— A. Yes.

Q. —you meant, did you not, her departure from Rotterdam after discharging eastbound cargo? A. At Rotterdam, yes.

Q. Now, having talked over with the master whatever

you felt had to be talked over with him at Rotterdam, what next did you do? A. The next thing for me would be to inform the agents in the port of Hamburg, and subsequently in the port of Bremen, as to the proposed stowage of (53) bookings which they wanted to ship. There was always this, in a regular liner service, those bookings change, sometimes change by the hour, so the time consumed by the ship in transit between the ports of Rotterdam and Hamburg in the meantime, there might still be changes and therefore we exchanged the latest information either by teletype or by telephone—sometimes by letter if there was time to do so—and then a proposal of stowage was given by me to the agents in the German ports, with the instructions for their representative who boarded the ship to discuss this with the master, and of course get his approval or eventually his refusal to do this or that.

Q. Can you keep your voice up just a little bit, Captain? A. I will try to.

Q. Now, after the completion of loading at the two German ports, by which you meant Hamburg and Bremen—did you not? A. Yes, I did.

Q. —where ordinarily did the vessels of the Black Diamond liner service proceed? A. From the Port of Bremen to the Port of Antwerp.

Q. And at Antwerp were you usually present when (54) the vessel was loaded? A. I was.

Q. Were you present there when the Black Gull loaded at the end of June or the beginning of July, 1952? A. I was.

Q. Now, what did you do at Antwerp with respect to the loading of the Black Gull for the voyage for which she was there at that time? A. At the Port of Antwerp it was the established custom to make out a tentative stowage plan, to present this to the master again for ap-

proval, and to proceed loading according to such a plan or eventually an amended plan.

In this plan were also then incorporated the latest informations received from the Port of Rotterdam where loading would subsequently be continued.

Q. Who prepared the tentative loading plan for the Black Gull at Antwerp in June or July, 1952, Captain Hollaar? A. That was the result of the discussion, the primary discussion between the stevedores and myself, afterwards then handed in to the master.

Q. You were appointed by the New York office of the Black Diamond Steamship Corporation, were you not? (55) A. I was.

Q. Were you answerable to the agents of Black Diamond Steamship Corporation at Antwerp or at Rotterdam? A. Answerable in what respect, please?

Q. Were they in a position under the corporate set-up of Black Diamond Steamship Corporation to give you orders or instructions? A. No, sir, not in that sense they couldn't give me orders or instructions.

Q. Who was your superior in the Black Diamond Steamship Corporation? A. The officers of the company in New York and the operating manager in the New York office.

Q. And who was the operating manager at that time? A. Captain M. W. Lohse.

Q. By whom were the stevedores who loaded the Black Gull employed? A. By Black Diamond Steamship Corporation; they were under contract to them.

Q. Under contract to them? A. Yes.

Q. And was that true both at Antwerp and at Rotterdam? A. It was.

Q. You said the tentative plan was prepared (56) in consultation with those stevedores.

Who, as between yourself and the stevedores, had the

final say as to where cargo should be stowed? A. The final say rested with the master, not with any one of us.

Q. That was after it was presented to the master? A. Yes.

Q. But in determining what to present to the master, Captain Hollaar, who as between you and the stevedores had the final word? A. Then I would have it.

Q. And did you have it in July 1952—A. I did.

Q. —with respect to the Black Gull? A. I did.

Q. Now, can you recall, Captain Hollaar, whether prior to the arrival of the Black Gull at Antwerp to load you had any information whether naphthalene had been booked for transportation on her? A. I did have that information.

Q. Prior to her arrival to load? A. Yes.

The Court: Arrival at what port?

Mr. Zisgen: At Antwerp, your Honor.

(57)

Q. Was that also true with respect to Rotterdam, Captain Hollaar? A. That was true, too.

Q. That is, before her arrival at Rotterdam you knew she was to lift naphthalene? A. Yes, sir.

Q. On the tentative plan which was prepared for presentation to the master at Antwerp, was there shown where the naphthalene to be lifted at Antwerp was to be stowed? A. It was.

(58)

Q. And that plan you saw? A. I did.

Q. Did you personally present it to the master? A. I do not recall; I do not recall.

Q. In any event, you knew it would be presented to the master? A. Yes.

Q. And was that prior to the commencement of loading? A. Yes.

Q. Did that tentative plan or did it not show that the naphthalene to be lifted at Antwerp was to be loaded on deck? A. Yes, it did.

Q. Did it show whether the naphthalene stowed on deck was to be covered? A. It did not.

Q. Did you know prior to the loading of the naphthalene whether or not it would be covered when loaded? A. It would not be covered.

Q. You knew that. A. Yes.

Q. Now dealing with Rotterdam, was the situation (59) the same there? A. Yes, the very same.

Q. That is, the tentative plans showed that naphthalene would be stowed on deck? A. It did.

Q. And you knew before the naphthalene was loaded that it would not be covered? A. I did.

Q. And the tentative plan for loading at Rotterdam was presented to the master by you? A. By my assistant, most likely.

Q. You knew, however, that it would be presented to the master? A. I did.

Q. Didn't you see the naphthalene in fact stowed on deck, Captain Hollaar, at Antwerp? A. I did, sir.

Q. How about at Rotterdam? A. Also, sir.

Q. And you saw that it was not covered at either port? A. I did.

Q. Can you tell me what you can recall about the way in which it was stowed, that is, the height, (60) the length and breadth of that stow? A. Approximately, sir. I could do that. We will say that the height was in the neighborhood of 6 feet, and the width ~~in thwartship~~ direction would be about 13 feet, and then all along the length of the weather deck.

Q. And approximately what is that length, Captain?

A. The length of the weather deck approaches about between 90 and 100 feet aft, and the same thing forward.

Q. And was that whole 90 feet or so covered with bagged naphthalene? A. Eventually, yes.

Q. That is, taking the two ports— A. Together.

Q. —of Antwerp and Rotterdam together? A. Yes.

Q. Now was that stowed on both sides of the hatch, Captain, in the same fashion? A. Yes, it was.

Q. So that both on the port and the starboard sides we have 6 feet high by 13 feet in width by 90 or more feet in length? (61) A. Yes, we had.

Q. And then it was stowed right out to the bulwarks of the ship, was it not? A. Not exactly right out to the bulwarks. We had the habit of erecting a wooden—you might call it—a fence on the so-called railing stanchions, so that the bags of naphthalene would not come in the space between the railing stanchions and the steel plates of the railing, and in that way providing for a runway for the water that might be shipped, to reach the scuppers.

Q. I take it the distances from the bulwarks into the outermost bags of the stow were not very great, Captain? A. No, if I must estimate here I would say about a foot, or a foot and a half at the most.

Q. And in that space you had this fence, as you call it? A. Yes, yes.

Q. That was of wood, I take it? A. Of wood, of dunnage wood, yes.

Q. Now along the hatch coaming, Captain, were the bags stowed right up against the hatch coamings on either side? A. No, there was a runway provided for the crew (62) and for stevedores, longshoremen, to move back and forth along the hatch coamings.

Q. And approximately how wide was that in a thwartship direction? A. About three feet.

Q. And except for that you had from the outermost edge of the three-foot passageway a solid stow of bags

out to a foot or eighteen inches from the side of the ship? A. Yes.

Q. And 6 feet high? A. And 6 feet high, about.

Q. And in that stow the bags were simply loaded in place, one on top of the other, were they not? A. Yes; yes, more or less, with the exception that at the ends of the stow where we crisscrossed the bags to get a more tight front, so the rest of them was laid in a fore and aft direction. That is the usual way we did.

Q. But there was nothing separating the tiers? A. No.

Q. And that stow was held in place by what, Captain? (63) A. By nets, rope nets, which we used for that purpose.

Q. And how were those rope nets arranged to fulfill their function? A. These rope nets were laid on the deck. They had tail ends of manila rope on one side, allowing to tie these to railing stanchions and other available fixed points, and the sides of the vessel—ringbolts on deck or anything that presented itself in that line, and then in such a manner that for approximately about two to three feet, I would say, those nets were covered by the stow of the bags of naphthalene.

The rest of the slack of the net was then temporarily heaped up along the stow, and when it came to securing, it was folded back over—up and over the stow of naphthalene towards the railing.

These nets are provided, and were in this case provided with rings, steel rings, spliced into the nets through which a runner or steel wire or rope could be reefed so that you could tighten up on that stow.

Q. In effect you tucked one end in— A. In, yes.

Q. —under the bags, is that right? (64) A. Yes, sir.

Q. And you fastened the other end to a part of the ship? A. Yes, but do not forget that the tucked-in end was held in place by these tail ends of manila rope which were

fastened to the railing. It was not a method that you could pull the net from under the stow, like a bed-sheet.

Q. Now as of June and July, 1952, Captain Hollaar, what did you know of the characteristics of naphthalene in bags? A. I knew that naphthalene was classed as a hazardous cargo.

I knew, amongst others, that the flashpoint of naphthalene was around 78 to 80 degrees Centigrade, and I knew that naphthalene gave off obnoxious odors and that that was one of the reasons why we insisted on carrying this cargo on deck instead of under deck, in order to protect other cargo which of necessity would have to fill out the under-deck cargo spaces.

Q. This naphthalene was in bags, was it not? A. It was.

Q. What kind of bags were they? A. They are jute burlap bags of tight and woven (65) cloth.

Q. You mentioned the odor which emanated from the bags of naphthalene. A. Yes.

Q. What did you know of the qualities of that odor? A. Well, that I knew indicated that there was a certain percentage of volatile, you might call it, gas or whatever you want to call it, in the naphthalene, and that the escape of that caused this odor.

Q. What did you know of the quality of inflammability or lack of it, of that gas? A. Well, I knew the gas was not very inflammable, although—if at all, although a combination of this gas in a certain percentage mixed with air could form an explosive mixture. That might perhaps not be aggravated if dust particles of this naphthalene should be suspended in air in closed spaces.

Q. Did you know anything about the flashpoint of naphthalene in July, 1952? A. I mentioned to you it was 78 to 80 degrees Centigrade.

Q. You did—you are quite right. What did you know of the flashpoint of the (66) gas? A. Of the flashpoint of the gas, I did not know that in 1951, but I knew it

wasn't very close because it was only classed as hazardous cargo not as dangerous cargo.

Q. You said "1951," Captain. Did you mean "1952"? A. Oh, 1952, yes.

Q. July, 1952. A. Let us pin it down to the time of the accident, yes.

Q. All right. What effort had you made at that time, Captain, to obtain information about naphthalene? A. I had read up on it in various handbooks. I had gone through exams for my licenses, and during those examinations questions on dangerous cargo—it is habitual to ask those of the candidates so that in order to pass an examination you have to prepare yourself before appearing before the examiners.

I had visited a naphthalene-producing factory—well, I must say that in Dutch because it is the proper name of the factory—Teerbedryf, and then Uithoorn, and there I had learned from the management (67) something about naphthalene, too.

Q. Had you done anything else to obtain information about naphthalene at that time? A. No, sir. That exhausts about what I did.

Q. Had you consulted any of the commentaries on dangerous goods? A. Of course I have. That is what I mentioned, handbooks on dangerous cargoes.

Q. Can you name them for me? A. Oh, yes. I had Noordreaven, Aeby's and then I have the book of the French, Marine Marchande on dangerous cargoes.

Q. Any others? A. Well, I will stop at those.

Q. Now you have mentioned Noordreaven, and you have mentioned the French book. A. Yes, sir.

Q. Those are the only ones that you had consulted? A. Oh, no, I have read more. There used to be a book, the German book on it, too—(snapping finger)—let me see how it is called—maybe I can refer to it later—that German name. It doesn't occur to me right now.

(68)

Q. You had consulted Aeby's book, you said? A. Yes, I did.

Q. I show you a book which has heretofore been marked as Libelants' Exhibit 4 for identification, Captain. Is that the book to which you refer (handing to witness)? A. Yes, sir, that is the book to which I refer.

Mr. Zisgen: That, your Honor, is Dr. Jules Aeby's book, "Dangerous Goods, Third Edition," published in 1938.

I have photostated the pages of those which I think are of importance, and to keep from having the record too voluminous, I think it might be well if my brothers approved to substitute photostats for the book itself.

The Court: May that be done with the understanding that if anybody thinks that something of importance has been omitted it may be supplied later?

Mr. Zisgen: With that understanding, I offer in evidence a photostatic copy of certain pages of the book which has heretofore been marked as Libelants' Exhibit 4 for identification.

(Marked Libelants' Exhibit 9.)

(69)

Mr. Pyne: What pages are they?

(Mr. Zisgen hands to Mr. Pyne.)

By Mr. Zisgen:

Q. Had you at that time—that is, July, 1952—consulted the United States Coast Guard Regulations, Captain Hollaar? A. I had.

Q. I show you a pamphlet entitled "Explosives or Other Dangerous Articles on Board Vessels, Regulations Prescribed by the Commandant of the Coast Guard," and ask you if that is the booklet (handing to witness)? A. It is.

Mr. Zisgen: Here again, your Honor, I have prepared photostatic copies of some portions of the Regulations, and on the same understanding as before I would like to offer the photostats in place of the book.

The Court: If there is no objection it will be done.

(Marked Libelant's Exhibit 10.)

By Mr. Zisgen:

Q. And you were familiar in July, 1952, with the requirements of the United States Coast Guard (70) Regulations as set out in this pamphlet, were you not? A. Yes, sir, I was.

Q. And you were also familiar with what is set out in the third edition of Dr. Aeby's book on Dangerous Goods? A. I was.

Q. Captain Hollaar, was there anyone in Europe, in June or July, 1952, in authority over you with respect to the preparation of tentative loading plans for westbound vessels of the Black Diamond service? A. Well, if you eliminate the master, sir, if you refer to the shore staff, there was not.

Q. There was none except the master? A. Yes.

Q. And the master of the Black Gull was not employed by Black Diamond Steamship Corporation, was he? A. No, sir.

Q. So that so far as concerns Black Diamond Steamship Corporation, there was no one in Europe in July,

1952, whose authority exceeded yours with respect to the preparation of the tentative plan of stowage? A. That's so.

(71)

Q. Now after the vessel had been loaded, Captain Hollaar, what became of the tentative loading plan? A. Well, sir, that was destroyed because that is placed by the final loading plan which is being prepared as the loading progresses.

Q. And under whose supervision was the final loading plan prepared? A. That is done by the checking department of the stevedores.

Q. The what department? A. By the checking department of the stevedores.

Q. And the stevedores at Antwerp and Rotterdam were, I think you told us under contract to Black Diamond Steamship Corporation? A. Yes, sir, they were.

Q. So that the final loading plan, then, was prepared by some department of those contracting stevedores at both ports, is that correct? A. That is correct.

Q. Was that under your general supervision? A. Well, yes, I must say it is. I glance at that plan once in a while while it is on the board, on the drawing.

(72)

Q. For what purpose? A. Just to follow up and see how far we have progressed, to see if all the things are given the right alignment and so forth, because a stowage plan is supposed to give an intelligent picture of the actual, relative position of the cargoes on board to the people on the other side of the line who have to take the cargo out, and to base their activities on what they can read from the stowage plan.

Q. Do you know what was done with the final loading plan for the Black Gull's cargo at Antwerp and at Rotter-

dam, after those final loading plans were completed? A. Yes, I do.

Q. And what was done with them? A. A certain number of these plans are distributed, amongst others, to the agent's office. Some go in the archives of the checking department of the stevedores.

A certain number of them go on board and are carried as a rule by the chief officer for ready reference and for handing out in the ports of discharge.

Another part of these plans are mailed to the United States ports of discharge at the address of (72a) the agents, so that is in general what is done with those plans.

Mr. Zisgen: Mr. Stonebridge, may I have the stowage plan of the Black Gull?

The Court: Court will recess now for lunch until 2:15.

(Recess to 2.15 p. m.)

AFTERNOON SESSION

(73)

(2:15 p. m.)

HUBERT HOLLAAR, resumed the stand.

Direct examination continued by Mr. Zisgen:

Q. Captain, I show you two documents produced by Mr. Stonebridge, which appear to have been marked Exhibits 1 and 1-A (handing to witness). Will you look at them and tell me whether together they constitute the stowage plan of the Black Gull for the voyage we have been talking about? A. They do.

Mr. Zisgen: I offer those in evidence, if your Honor please.

(Marked Libelant's Exhibits 11 and 11-A)

Q. Captain, according to the stowage plan, Exhibits 11 and 11-A, there were also stowed on deck some drums of hydrogen cyanide, were there not? A. There were, sir.

Q. And you recall that shipment, I take it? A. I do.

Q. Were you present when that shipment was stowed on board the Black Gull? A. I was, sir.

Q. Will you tell us how it was stowed? A. It was stowed on the after deck in a space (74) between the after end of the hatch coaming of No. 4 and the after deck house. The master house, I should call it, not the deck house.

Q. How was it kept in position there, Captain? A. It was secured with wire.

Q. Was it covered or uncovered? A. It was covered.

Q. And with what? A. With tarpaulin.

Q. Was that at your request or at your suggestion? A. It was at my suggestion.

Q. And why did you make that suggestion? A. Because these drums contained a liquid. Liquid is liable to expand through heat, and although it is a requirement for factories who tender shipments of those liquids for shipment to leave a certain ullage or free space in those drums it is just as well to at least try and minimize the expansion of that liquid as much as possible. So therefore we covered it.

Q. What did you view as the possible source of heat which might expand that liquid? A. Well, that is the general temperature of the air that the ship might encounter during the voyage. The temperature might very well rise slightly over the temperature which was prevailing at the time of (75) loading.

Q. And what would cause such a rise, Captain? A. Well, the cause of that rise would be the amount of sun heat that was given off to our atmosphere under certain weather conditions.

Q. And you anticipated that the covering with a tarpaulin would minimize the effects of the sun coming through the atmosphere on those drums? A. I did.

Q. Would it not be true, Captain, that a tarpaulin would have that same minimizing effect on the sun's rays over any cargo? A. It would not have the same effect, sir, because unless we deal with a liquid, if we deal with another commodity there is most likely no question of expansion.

(76)

Q. You are talking in terms of the expansion of the liquid, Captain? A. Yes.

Q. But so far as concerns the transmission of heat to the tarpaulin, taking any given tarpaulin, its effect as a preventative to the passage of heat would be the same thing no matter what cargo it was over, would it not? A. It would not necessarily. I can imagine that a tarpaulin would have an adverse influence. It might even serve to contain in a certain stow, particularly would I expect so in a stow when the cargo was contained in bags, whereas with drums there is of necessity a lot of broken stowage in between the drums, so the free circulation of air for the drums—between the drums is somewhat easier than it would be in a pile of bags.

Q. I think again, Captain, you misunderstood me. I am speaking of the effect of the tarpaulin, the top of the tarpaulin, if you like— A. Yes.

Q. —in breaking the heat ray emanating originally from the sun, which you spoke of before. A. Yes.

Q. Now isn't it a fact that any given tarpaulin of whatever construction and whatever thickness (77) it may be,

will be the same in cutting that heat ray off, no matter what cargo it is stowed over or placed over? A. I don't think so, sir. I still remain by my opinion that it all depends on what is under that tarpaulin.

Q. Then it is your view that the effect of a tarpaulin in preventing a transmission of heat from the sun differs, depending on what is underneath it? A. Yes, sir

Q. Now you knew in June and July, 1952, that the gases given off by the naphthalene at ordinary temperatures are heavier than air, did you not? A. Yes, sir.

Q. Were these bags of naphthalene on the "Black Gull" stowed directly on the steel deck, Captain Hollaar, or were they stowed on something else? A. They were stowed directly on the deck, steel deck.

Q. There was no dunnage underneath? A. There was no dunnage underneath.

Q. You had been present at Rotterdam in September, 1948, I believe it was—yes, in September, 1948, when the "Norwalk Victory" was loading there, were you not? A. I was present.

(78)

Q. That vessel was being operated in this same Black Diamond liner service, was she not? A. She was.

Q. You recall, do you not, that there was a fire during the course of loading operations, Captain Holaar? A. I do recall, sir, yes.

Q. And will you tell us in what commodity that fire broke out? A. In bags of naphthalene, apparently.

Q. And what were the circumstances as you recall them? A. The circumstances were such that naphthalene was being taken on aboard that vessel, on the forward deck in this particular instance—and bags coming out of the barge, and the deck at the time of the outbreak of the fire was practically already filled with naphthalene. It must have been among the last tons to be taken aboard

when a draft came out of this barge and was landed on top of a stow of this naphthalene—if I am not mistaken, on the port side abreast of No. 2 hatch, when as this draft landed there was a flame and a fire broke out among the bags of naphthalene.

Q. How many bags were there in that draft, Captain, as you recall it? A. There must have been about ten bags, approximately.

(79)

Q. How many, or rather what was the tonnage of the naphthalene stored on the deck of the "Black Gull" on this voyage of July 1952? A. On the forward deck we had about 300 tons and on the after deck we had about 250 to 260 tons of naphthalene all told.

Q. So that altogether there were something over 500 tons? A. There was, yes.

Q. Do you know how long it took to extinguish the fire on the Norwalk Victory, Captain Hollaar? A. It is long ago, but it was a matter of minutes. If I must make a guess, something like perhaps ten to fifteen minutes at the very most.

Q. And the fire was extinguished, I take it, by the use of water? A. Yes, it was.

Q. Now that was not solely water from the ship's own hoses, was it? A. No, the ship's own hoses were playing on the fire first, but in the meantime hoses were also broken out from the fire-fighting system adjacent to the cargo ships along the dock.

Q. That is quite an extensive system that they have at Rotterdam, do they not? A. Well, they have over 50 or 60 meters—let (80) us say 150 to 200 feet roughly—and this I am quoting by heart; I never actually measured it—they have a hose there ready for use.

Q. Is that true at all times during loading? A. Yes, that is true at all times.

Q. And that was true when the Norwalk Victory was there? A. That is true, yes.

Q. You were brought here for this trial by the Black Diamond Steamship Corporation, were you not, Captain? A. Or by the counsel for the Black Diamond Lines.

Q. And have you talked to me about this case on any prior occasion excepting when you gave your deposition in Rotterdam? A. To you?

Q. To me. A. Not that I recall, no.

* * * * *

---

(84)

Deposition of Capt. W. J. Swart.

I have next, your Honor, a deposition of Captain W. J. Swart, taken at Rotterdam on August 10, 1955.

The transcript of the deposition is physically bound into a booklet with two others, which I am not offering at this time.

I suggest that I simply take out those pages and that we mark those.

The Court: Would that be satisfactory?

Mr. Zisgen: The pages I am marking are 30 to 34.

(Marked Libelants' Exhibit 16.)

Mr. Zisgen: Captain Swart, your Honor, testified that he is a nautical surveyor and has been a nautical surveyor for some 36 years.

He testified that he is also a sworn nautical surveyor, explaining that that is a designation that became current only at the end of World War II, and that it involves taking an oath annually. He did not describe the oath but I presume it is to

properly and carefully examine and report on his findings.

. . . .

(86) . . .

He was then asked whether there was any standard or any source of information which nautical surveyors at Rotterdam employ to ascertain what is the proper stowage of dangerous goods, and he answered, "We use as surveyors that book of Aeby." He was then shown the book, which has already been offered in evidence this morning, the third edition of Dr. Aeby's book "Dangerous Goods," and he identified that as the book to which he referred, adding at page 334, "You will find a note on that point."

. . . .

---

(89) . . .

Deposition of HAROLD FARSTAD.

I next plan to offer parts of the deposition of Harold Farstad, who was a steward on the vessel and who was called as a witness by Mr Pyne.

. . . .

"Direct examination by Mr. Pyne:

"Q. Were you formerly a member of the crew of the vessel called 'Black Gull'? A. Yes, I was steward.

"Q. When approximately, as best you can remember, month and year, did you first join the 'Black Gull'? A. On the 4th of October 1950.

"Q. And you joined them at that time as steward? A. Yes.

"Q. When did you leave the vessel? A. After the vessel had been on fire."

. . . .

(90) • • •

"Q. And the vessel was at sea at that time? A. Yes, about eight hours away from New York."

• • • •

"Cross-examination by Mr. Zisgen:

"Q. Mr. Farstad, I see you smoke. A. Yes.

"Q. How long have you smoked? A. Twelve to 13 years."

• • • •

(93) • • •

"Q. Now, where were the crew's quarters on this ship? A. In the stern of the ship. The poop they call it."

• • • •

(94) • • •

"Q. Now, the members of the crew were allowed on the main deck during the voyage, were they not? A. Yes, they must.

"Q. And to get from their quarters aft to the bridge or to the bow of the ship it was necessary for them to pass along the main deck, was it not? A. They had to."

• • • •

(95) • • •

"Q. Where did you smoke when you smoked? A. In my cabin."

• • • •

"Q. Were you ever aft in the crew's quarters? A. Every day. It is my job to see if everything is in order.

"Q. Were there signs in the crew's quarters saying 'no smoking'? A. Not in the cabins, but in the alleyways."

• • • •

(96) • • •

"Q. You told us that passengers were not allowed to smoke in the dining saloon. Where were they allowed to smoke? A. In the cabin and in the smoking saloon.

"Q. Where was the smoking saloon? A. Next door to the dining saloon."

• • • •

"Q. And on this voyage some passengers did smoke, did they not? A. I cannot say, but I take it for granted that there were some amongst them that smoked."

• • • •

Deposition of J. A. DRIESPRONG.

(97) • • •

The first deposition from which I want to offer a portion is that of Johannes Andrianus Driesprong, • • •

• • • •

"Direct examination by Mr. Marcellino:

"Q. Where do you live, Mr. Driesprong? A. In Boskoop.

"Q. What is your nationality? A. Dutch.

"Q. On or about July 18, 1952, were you a passenger on the S.S. 'Black Gull'? A. I was.

(98)

"Q. Were your wife and daughter with you on that voyage? A. They were.

"Q. What cabin were you assigned to, all three of you? A. My wife and I were in cabin . . . I think No. 3, and our daughter next to us, in No. 4, I should say. But I cannot be quite certain about this.

"Q. When did the three of you board the vessel and where? A. In Rotterdam. On July 10th. At night."

Turning to page 5:

"Q. During the course of your voyage did you walk around the decks of the vessel? A. Yes, sir.

"Q. Can you tell us what decks you walked about? A. All the decks.

"Q. Did you walk on the maindeck? A. Yes, sir.

"Q. Did you see any merchandise stowed on the main deck both fore and aft? A. Yes.

"Q. Particularly as to the aft deck, what did you see? (99) A. A stack of bags on both sides of the boat; aft, and also in front.

"Q. Can you tell us generally whether it was a large number of bags, a small number of bags? A. No, a large number.

"Q. What area of the aftdeck did these bags cover? A. All of it."

* * * *

"Q. At the time you boarded the vessel at Rotterdam, Mr. Driesprong, or during the course of the voyage, were you given any instructions by any of the officers as to your movements aboard this vessel? A. No.

"Q. Were you told, by anyone at all, if you could or could not visit a certain area of the boat? A. No, sir.

"Q. Now in your cabin, was there any sign relative to smoking? A. What does the word 'relative' mean?

"Q. Concerning smoking. In your cabin was there any sign concerning smoking? A. No.

"Q. Do you smoke, Mr. Driesprong? A. I do.

"Q. Does Mrs. Driesprong smoke? (100) A. No, she does not.

"Q. Does your daughter smoke? A. She does.

"Q. Did you during the course of this voyage smoke in your cabin? A. Yes.

"Q. Did you during the course of this voyage smoke in the smoking room? A. Yes."

On page 8:

"Q. Can you tell me what other parts of the vessel did you smoke during the course of this voyage? A. In all the rooms, the public rooms so-called, you see, and also on the decks.

"Q. Which decks? Can you be a little more accurate about which decks you smoked on? A. Well, there were three decks you see. What we term . . . I should call the top deck, and then the sun-deck, and then the deck where the cargo was on.

"Q. And as I understand, you smoked on all of these decks from time to time? A. Yes."

• • • •

(101) • • •

"Q. Did you see any members of the crew smoking on the decks? A. Yes, sir."

• • • •

"Q. Mr. Driesprong, were there any signs relative to smoking outside of your cabin or anywhere on the vessel? A. I have not seen any."

• • • •

(102) • • •

"Cross-examination by Mr. Zisgen:

"Q. I see this morning that you smoke cigarettes. What does your daughter smoke, also cigarettes? A. Also cigarettes.

"Q. Did any other passengers smoke that you saw on the 'Black Gull'? A. Yes.

"Q. What did they smoke? A. Some pipe, some cigars, some cigarettes, (103) some all three; I smoke the three, too.

Deposition of J. A. Driesprong—Cross

"Q. What did the members of the crew of the 'Black Gull' whom you saw smoking, smoke? A. As far as I saw it, it were cigarettes."

• • • •

"Q. Mr. Driesprong, did any member of the crew or officer of the Black Gull request you not to smoke on any particular part of the ship? A. No."

• • • •

Deposition of JACOBUS DENOBEL.

The next deposition, your Honor, is that of Mr. de Nobel, • • •

"Direct examination by Mr. Marcellino:

"Q. Mr. deNobel, on or about July 18, 1952, were you a passenger on the SS 'Black Gull'? A. Yes, I was.

Further down the page:

"Q. You boarded this vessel where? A. In Rotterdam, on July 10th."

• • • •

(105) • • •

"Q. • • • Were there in your cabin any signs concerning smoking? A. None, no one, I never saw a sign concerning smoking.

"Q. In these portions of the decks which you visited during this voyage, did you see any signs concerning smoking? A. No.

"Q. Do you smoke, Mr. deNobel? A. Yes, I smoke a lot.

"Q. What do you smoke? A. Nearly always cigarettes.

"Q. Did you smoke in your cabin during the course of the voyage? (106) A. Of course I did.

Deposition of Jacobus deNobel—Direct

"Q. And did you smoke on the boat deck during the voyage? A. On this boat deck I smoked as well.

"Q. During the course of the voyage, did you see other passengers smoking? A. Well, nearly all was smoking, especially the men and, well, the daughter of Mr. Driesprong smoked and Mrs. Leeson smoked sometimes."

• • • •

"Cross-examination by Mr. Zisgen:

"Q. Mr. deNobel, did any officer or member of the crew of the 'Black Gull' ever ask you not to smoke while you were on the ship? A. No one."

• • • •

Deposition of PETER SPAANDERMAN

"Direct examination by Mr. Marcellino:

"Q. Were you a passenger on the 'Black Gull' (107) on July 18, 1952? "A. I was."

• • • •

"Q. Where did you board the 'Black Gull'? A. In Rotterdam."

• • • •

"Q. Do you smoke, Mr. Spaanderman? A. Yes.

"Q. Did you smoke on this voyage? A. Yes, I did.

"Q. In your cabin were there any signs concerning smoking? A. Not a single notice.

"Q. In the course of this voyage, did you become generally familiar with the various decks of the boat? A. During the voyage I was several time on the lower deck, but most of the time I was on the decks around the bridge.

"Q. You say lower deck. Mr. Spaanderman, which deck do you mean? Is that the deck where the cargo was stowed on board? A. Yes.

"Q. Did you see this cargo? A. Yes.

(108)

"Q. Could you describe the cargo that was placed on the after deck of the boat? A. It was a cargo packed in bags and they were bags which had a hole in them and through these holes one could see that they contained a reddish yellowish substance.

"Q. What portion of this after deck did the cargo cover? A. Both sides.

"Q. Did you during the course of this voyage see any signs on the decks or anywhere along the ship concerning smoking? A. I personally did not see anything.

"Q. Did you see any sign, either in your cabin or on the decks, concerning the disposal of cigarettes or matches?"

• • • •

And the answer as given through the interpreter was: "I saw a cigar and a cigarette thrown down on the deck around the bridge, and in our cabin there (109) was an ashtray.

"Q. Did you see any printed signs either in your cabin or on any place on the decks of the boat concerning the disposal of cigarettes and matches? Signs? A. Not a single one."

• • • •

"Q. Were you told by any officers or members of the crew not to smoke on deck. A. We were never told so."

• • • •

(110) • • •

"Cross-examination by Mr. Zisgen:

"Q. Mr. Spaanderman, you told us that you had seen cigars and cigarettes thrown down around the bridge on the 'Black Gull.' Can you tell us when you saw that?"

• • • •

"A. Every day."

• • • •

Deposition of Jan P. Muller—Direct

(113)

Deposition of JAN P. MULLER.

Mr. Zisgen: The next deposition, your Honor, is that of Jan P. Muller.

• • • •

"Direct examination by Mr. Pyne:

"Q. Now, in July, 1952, were you on board the Steamship 'Black Gull' on a voyage between Europe and the United States, on which a fire occurred on that vessel? A. Yes.

"Q. Where did you board the vessel? A. In Rotterdam.

"Q. And for what purpose, or in what capacity, or why did you board her? A. Oh, just as a passenger."

• • • •

"Cross-examination by Mr. Zisgen:

"Q. Do you smoke, yourself? A. Sometimes.

"Q. What do you smoke, when you do smoke? A. Cigarettes.

"Q. And did you smoke on this voyage? A. I can't remember. I don't smoke very often, so I cannot remember. I may have smoked.

(114)

"Q. Did you see other people smoking on the voyage? A. I don't actually recall if they did, but I am pretty sure they did. I mean they are likely to have.

"Q. Did you entertain any fellow passengers in your cabin on the voyage? A. What do you mean entertain?

"Q. Did you have them in to visit you? A. There was another one with me in that cabin staying.

Deposition of Jan P. Muller—Cross

"Q. You were alone in the cabin? A. No. We were two of us. We were the only ones that was in the cabin with me.

"Q. If you saw anyone smoking on the voyage, it must have been outside of your cabin? A. Yes. Oh, yes.

"Q. And outside of their cabin? A. Yes."

• • • •

(115) • • •

"Q. Were you told at that time"—and by "that time" he is referring to the time when he received his ticket in Rotterdam at the office of the agent of the Black Diamond Lines—"Were you told at that time whether or not the ship would be carrying naphthalene? A. No, I didn't know that.

"Q. Were you warned at that time not to smoke on the voyage? A. I don't recall. I don't think so. I mean, the one thing I can remember pertaining to smoking is that sign in my cabin."

• • • •

(118) • • •

"Q. Mr. Muller, it wasn't clear to me when you were answering questions a moment ago, whether you yourself had walked from the passengers' section of the ship aft towards the rear of the ship. A. Oh, yes, I have been.

"Q. On the main deck where the naphthalene was? A. Well, that is where you had to walk through.

"Q. Through these passageways that you have described? A. Yes.

"Q. Do you recall whether any of your fellow passengers also walked through there? A. I believe everybody else did.

(119)

"Q. Frequently? A. I wouldn't know. The main reason just to see what the poop looks like, and the bow.

"Q. Well, did you go there more than once? A. Well, once, two or three times, I don't know. I just would go on the bow and watch the sunset.

"Q. And on the stern to watch the sunrise? A. No, I didn't get up that early.

"Q. Well, I take it then that on more than one day you walked aft through those passageways you have described, is that right? A. What do you mean on the aft?

"Q. Towards the rear of the ship. A. Well, I would say I walked more to the front of the ship than I did to the rear.

"Q. But you did walk to the rear? A. Yes, I did.

"Q. And so did your fellow passengers? A. I think so."

* * * *

---

(120) * * *

Deposition of THOMAS D. LEESON.

The first deposition is that of Mr. Leeson—Thomas D. Leeson, * * *

"Direct examination by Mr. Abberley:

"Q. Were you a passenger on the M/V Black Gull on or about July 18, 1952? A. Yes.

"Q. Did you purchase a ticket for passage on that ship? A. Yes.

"Q. Where did you buy your ticket? A. At the Black Diamond Agency in Antwerp."

Then two-thirds of the way down, page 3:

"Q. When did you board the Black Gull? A. The afternoon of the sailing date, which was the 10th.

"Q. 10th of what? A. July.

"Q. 10th of July, 1952? A. 10th of July, 1952.

"Q. Where did you board the Black Gull? A. Rotterdam?"

• • • •

(121) • • •

"Q. Mr. Leeson, tell us, if you can, whether there were any signs or regulations, written or oral, which might have been communicated to you with respect to your movements on the ship? A. We saw neither sign nor did we have any instructions given to us through the captain or through the members of the crew, as to where we could go.

"Q. Tell us generally where you would walk about on this ship? A. The deck, coming out from our cabin aft. We could walk there up through the dining room, and higher up, and then, on the main—shall we call it the promenade deck, which was the roof of our cabin. The roofs of our cabin.

"Q. When you were walking about, did you see other people walking on the decks of the ship? A. The other passengers."

• • • •

(122) • • •

"Q. Where did you see the crew or other passengers walk? A. Well, the crew mostly—mostly aft, on the main deck.

"Q. Did you notice any passengers walking in that area of the ship? A. Only one, to my recollection, who went down on that deck, fore and aft."

• • • •

(123) • • •

"Q. Did you notice any of them smoking? A. No. You mean, the crew?

"Q. Crew or passengers. A. Passengers—we smoked on our own deck.

"Q. Were receptacles provided for smoking on your own deck? A. I didn't see any."

• • • •

(126) • • •

"Cross-examination by Mr. Longley:

"Q. You spoke of seeing some passengers walking aft. I understood you to say that the crew walked aft where this naphthalene was located? A. The crew, yes.

"Q. And if I followed you, you said there were passengers there? A. There was one passenger. I can specify one passenger. He was a German young boy, and I know he (127) used to get out along the fore part, from the bow of the ship. But I believe he was eventually told not to do it.

"Q. Were you ever given any warning about smoking? A. Neither written nor oral.

"Q. You smoked when you wanted to? A. Yes.

"Q. And you smoked where you wanted to? A. Well, yes and no. We only wanted to smoke on our own deck. That was the only part of the ship that interested us and we smoked there."

• • • •

(128)

"Q. And the other passengers, you saw them smoking up there?"

That, your Honor, refers to the upper decks and these passengers' housing amidships.

"A. Yes, I suppose I did, but it wasn't my affair——

"Q. Of course, but you did see them?"

• • • •

"A. Yes, I saw passengers smoking."

• • • •

Deposition of Thomas D. Leeson—Cross

"Q. On your voyage across the Atlantic, you had considerable hot weather, did you not? A. We had very hot weather and very fine weather the whole way across.

"Q. Smooth? A. Smooth and hot.

"Q. As the vessel proceeded, you did have some breeze that came across the decks from forward to aft, did you not? A. Yes, but to my memory we didn't have such an awful lot of wind. It was very hot, on the contrary."

• • • •

(129)

"Q. And there were no limitations given to you, either orally or in writing as to where you might walk while on the ship? A. None. That was left to the passengers' appreciation of comfort, I should think.

"Q. The smell of naphthalene, I gather from what you said, was very marked when you went on board at Rotterdam, was it not? A. Well, when we got on board at Rotterdam, after the time necessary to settle into our cabins, then—we began to take noses of this smell.

• • • •

---

(134) • • •

Deposition of JEANNE LEESON.

Mr. Zisgen: Then Mrs. Jeanne Leeson was examined • • •

"Direct examination by Mr. Abberley:

"Q. You have heard your husband testify with respect to instructions, signs and orders with respect to smoking

on the M/S 'Black Gull'. If you were asked those same questions, would your testimony be the same? A. Yes."

• • • •

"Q. Did you at any time ever notice any of the crew or any of the officers smoking? A. We didn't mix with the crew, so I wouldn't know. And the officers smoked after dinner."

Mr. Pyne interjected, "In the dining room?

The witness answered: "In the dining room or the lounge."

(135)

"Q. That is where you saw them smoke? A. Yes."

• • • •

"Q. Will you describe in chronological order and completely what happened to you on the evening of July 18, 1951, commencing at the time you were eating your dinner? A. After dinner we went to the lounge and had coffee. And then, this was when the first officer was called out. The captain went down. Then they came back and finished their coffee and when they finished (136) we all studied the book—usually there's a book, and passengers write something in the book or draw something. That took a long time and nobody agreed on what to write. So then eventually we decided to go up on deck. I don't know what time it was but it was dark and we stayed there a little while and the men smoked. These two Dutchmen usually had cigars and the ladies didn't smoke. None of the ladies smoked."

• • • •

(137) • • •

"Q. On the deck that you used to walk, were there any receptacles to receive burned matches or cigarettes? A. No.

(138)

"Q. Did you ever receive any warning from anyone, either when you purchased your ticket or from the ship's officers, about smoking? A. No.

"Q. Did anyone ever tell you about the naphthalene being highly inflammable? A. No.

"Q. Did you know anything about naphthalene? A. No."

• • • •

(139) • • •

"Q. What would you say was the proximate temperature of the weather you experienced during the voyage? Was it very hot? A. Yes. It was very hot.

"Q. You didn't have occasion to look at a thermometer, I suppose? A. We saw no thermometer, but I suffer from heat and I suffered.

"Q. Could you give us some estimate? Was it 100 degrees? What would you say? A. Well, being at sea, it would be less than on land, • • •."

• • • •

"Q. Anyway, it was a blazing hot sun and you cannot tell us how hot it was? (140) A. That's right."

Skipping a question and answer,

"Q. You spoke of the naphthalene running down. That was, of course, after the fire broke out? A. Yes.

"Q. You mean, it was a liquid then? A. Yes. To me it looked like a liquid.

"Q. You were in the boat at the time, were you? A. Yes.

"Q. And looking up at the ship's deck you could see this material running down? A. Yes."

• • • •

Deposition of Dr. Jules Aeby—Preliminary Examination

(152) • • •

Deposition of Dr. Jules Aeby.

Mr. Zisgen: • • •

I next plan to offer portions of the deposition of Dr. Jules Aeby, • • •

(153) • • •

Preliminary statement by Mr. Pyne.

"Pursuant to my statement on the record at the hearing August 1st that if Mr. Zisgen so desired, I would advise Dr. Aeby that I had no objections to Mr. Zisgen examining Dr. Aeby and would cooperate to produce him, I did so advise Dr. Aeby and I have arranged for Dr. Aeby's attendance here this morning and he already has been duly sworn as a witness by the (154) Consul. I will merely ask him a few preliminary questions for identification only."

Then the preliminary examination by Mr. Pyne:

"Q. And you are a chemist? A. Yes.

"Q. And you have been a chemist for a long number of years? A. Yes.

"Q. And did you last June meet me here in Antwerp at your home and have a discussion with me in connection with the 'Black Gull' case and the fire on the 'Black Gull' which occurred in July 1952? A. I had."

Mr. Pyne then said, "That is all the preliminary." And I commenced the direct examination:

Deposition of Dr. Jules Aeby—Direct

"Direct examination by Mr. Zisgen:

"Q. Dr. Aeby, have you ever seen or talked to me before this morning? A. I have not.

"Q. Will you tell me something of your education and your training to be a chemist? A. After my school, what I'll call my education until 18 years in Antwerp, I went to Germany to the technical school at Karlsruhe, Baden and I studied at (155) this high school for 3 years. Then went into practice and whilst in practice I studied at Berne, Switzerland; I got my degree which is doctor in philosophy, but not for science because there is no faculty for science. The title is doctor in philosophy. Then I had several situations in the practice until I came back to Antwerp to look into the interests of the Chilean Nitrate Industries, by whom I was retained 30 years, but from the beginning I was interested in the question of dangerous goods, because I acted as consulting chemist for the Red Star Line, which was then the biggest shipping company in the port."

I interrupted:

"Q. If I may stop you, sir, about what year did you return to Antwerp to do work for the Chilean Nitrate Industry? A. I came back to Antwerp in 1898 and I was not quite 27. I was 26, and from that time on I remained in Antwerp in different capacities, the main being to represent the Chilean Nitrate Industry but I was free from the beginning to be consultant for other companies, of which the most important was the Red Star Line and it was in the service of the Red Star (156) Line that I got interested to study this particular question of dangerous goods at a time when it was practically unknown and as it was so little known my friends asked me to put something in book form and the first edition of my book, which carries the title 'Dangerous Goods' dates from 1910.

"Q. And now, I will show you Dr. Aeby a book which has been marked 'Libellants' Exhibit 3 for identification'. Will you tell me whether or not it is the 1910 edition of your book? A. It is. This is the 1910 edition. The first. And in the preface I said that I had already 10 years experience The book met with success. It was soon sold out and then after the first World War as there was still a great demand for it, I made a second, 1922, edition which was somewhat changed, but not too much, because I was very busy and I thought that as I had plenty of friends for the first edition, I did not make too many changes for the second edition. All the primary stuff was there."

• • • •

(157) • • •

"Q. Could you tell how many copies were printed of the 1910 edition? A. No, I cannot tell you. I do not know.

"Q. Did it run to 10,000 copies? A. Certainly not.

"Q. A thousand maybe? A. If it is convenient for you, I can tell you the edition 1922, the second. That was 2000.

"Q. And what kind of people, that is in what occupation were the people who purchased either the 1910 or the 1922 edition or both? A. In the first the shipping people, the agents, brokers and ship owners, insurance people, the average adjusters, lawyers. I can give you a lot of testimonies that I got. Lawyers, shipping people, insurance people, lawyers, average adjusters, manufacturers of course.

(158)

"Q. Would it be fair to say that in general the 1910 and 1922 editions of your book 'Dangerous Goods' was

purchased principally by people interested in the transportation of the goods listed in your book? A. Yes.

"Q. It was a transportation book? A. Yes.

"Q. Now in that book in both the 1910 and 1922 editions, you wrote all that you then knew of the characteristics and the nature of the risks involved in the transportation of the goods listed in your book, did you not? A. Yes.

"Q. And you put in there also, I see by your preface, all of the information that you could gather from any source about those goods? A. Yes.

"Q. And whatever comments or recommendations you made in those two editions represented, did they not, your best opinion at that time as an expert? A. Yes.

"Q. Now in both those editions, Dr. Aeby, you divided the goods mentioned in those books into certain categories, did you not? (159) A. Yes.

"Q. And you gave certain definitions for the categories into which you divided the goods in the books? A. Yes.

"Q. One of those categories was the category of organic compounds, was it not? A. Yes.

"Q. And did you not define organic compounds as substances capable of burning when fire was applied to them? A. Exactly my words.

"Q. Now you also defined the term inflammable in your 1910 and 1922 editions, did you not? A Yes."

• • • •

(161)

"Q. As of the time when your 1922 edition and your 1910 edition were published, they represented your best opinion at that time, did they not, Dr. Aeby? A. Yes.

"Q. And did you not in 1910 edition define inflammable in the words that I gave you a few moments ago? A. If it is possible, would you repeat the words."

• • • •

Deposition of Dr. Jules Aeby—Direct

"Q. Dr. Aeby, I show you page 36 of your 1910 edition of your book. Did you define inflammable as substances which at a more or less high temperature give off such gases as in the presence of a naked flame ignite or explode? A. Yes, sir.

"Q. And did you not in your——"

Dr. Aeby interrupted: "Excuse me, haven't you got a 1922 edition?"

"Q. No, doctor, I do not. I have only the 1910 edition and the 1938 edition. A. I could produce the 1922 edition. I cannot say offhand if I said the same thing in the 1922 edition.

(162)

"Q. At least in the 1910 edition you said that. A. Yes, it stands there. You need not ask me.

"Q. You divided inflammable substances into several categories, one of them was substances of which the dust is inflammable, did you not? A. Again we can look."

• • • •

"Q. Dr. Aeby, I show you Libelants' Exhibit 4 for identification. Is that not the 1938 edition of your book 'Dangerous Goods'? A. It is."

That is the blue-covered book which Captain Hollaar also identified, your Honor, and a photostat of which has been offered as Libelants' Exhibit 9.

"Q. In this 1938 edition for the first time you endeavored to supply information as to the packing and stowage of many of the commodities listed in that book, did you not? A. I did.

(163)

"Q. That was something that had not appeared in the two earlier editions to any great extent, was it not? A. To any great extent? It was certainly a novelty to put stowage and packing for most good.

"Q. That is what I meant, sir. A. That is quite right."

• • • •

(166)

"Q. And this information which you tried to give them in your book represented in each instance your best opinion concerning the commodity at the time you published the edition in which that commodity was mentioned? A. Yes.

"Q. Now you did list naphtalene in your 1910 edition? Did you not? I think you will find it at page 174, item 219. A. Naphtalene, yes.

"Q. And you also listed naphtalene in your 1938 edition which is Libelants' Exhibit 4 for identification. A. The answer is yes.

"Q. In your 1938 edition you made certain recommendations concerning the stowage of naphthalene, did you not? A. Yes.

"Q. And one of these recommendations was that if stowed on deck that naphtalene should be covered and protected from the rays of the sun, was it not? A. Exactly.

"Q. Now why, what was the reason for that recommendation, Dr. Aeby? A. The reason was that uncovered bags, burlap (167) or jute bags, uncovered, could if you throw, take the most usual thing, a cigarette or cigar stump on them, fire may result.

"Q. Was there any other reason for that recommendation, sir? You say protected from the rays of the sun, what did you fear if the naphtalene bags were not covered and protected from the rays of the sun? A. Well,

I thought that if the sun was too strong, the possibility of taking fire by flame or by cigarette or cigar stump was greater. The higher the temperature of the naphtalene in the bags themselves, the greater is the danger that with a match you can put fire on it.

"Q. That is because a greater quantity of gases are liberated at a higher temperature, is that correct? A. Please repeat.

"Q. That is because at a higher temperature more gases are liberated from the naphtalene itself, is it not? A. Yes.

"Q. And it is the gas which is liberated from the naphtalene which may be ignited more readily than the naphtalene itself, is that not so? (168) A. Naphtalene as I said is volatile. You know what volatile means?

"Q. I think it means that gases are given off from it readily. Is that correct? A. Absolutely. I said very simply if a commodity smells, it is because particles of that commodity blow into the air. We all know that naphtalene has a very strong smell. It is even the smell, the objectionable smell is one of its qualities and one of its faults. So if the temperature is high the smell therefore revoked by a greater evolution of the particles would be greater.

"Q. The higher the temperature the more particles go off from it into the air, is that correct? A. Yes, and strike the nose. I don't think anybody has made the experiments to see how many gas comes from naphtalene, but it is evident that if a product smells it smells because it gives off particles of itself.

"Q. And those particles which are given off will ignite at the temperature of approximately 125 degrees Fahrenheit, is that correct? A. The flash point is given at 125 degrees Fahrenheit or in Centigrade 52 degrees. But that figure (169) of the flash point is difficult to give because naphtalene from a chemical standpoint is pure

naphtalene but as pointed out already here, there is pure naphtalene and crude naphtalene and there are different qualities of crude naphtalene. So it is rather difficult to give an exact flash point that applies to other products as well.

"Q. But now if the naphtalene in any particular instance were not pure naphtalene but were contaminated with some other substance or substances, what is your view as to the effect of that on the flash point. Would it be higher or lower than 125° Fahrenheit? A. That depends on the product that is present apart from pure naphtalene which is defined by chemical formula. Naphtalene is C 10 H8, but crude naphtalene is not C 10 H8. It has creosote and other things and in one factory the flash point will be lower, in another factory it will be higher, it depends on the raw product.

"Q. But then in the case of crude naphthalene it may be that the flash point is even lower than 125° Fahrenheit, is that correct? A. I don't think so.

"Q. You don't? You think that in the case of (170) crude naphthalene it would probably be somewhat higher than 125°. Is that correct? A. I could not tell you. But I can tell you that in the case that we have here under examination I would say if samples are to be obtained the flash point that is found is the flash point.

"Q. But there is no way of predicting what those samples would show? A. No. When I'm asked about the flash point, I must be able to take it myself."

• • • •

(171) • • •

"Q. And since 1938 at least and up until the time you published your fourth edition in June of this year you have felt it preferable that if naphthalene is stowed on deck it be covered and protected from the rays of the sun, is that correct? A. Yes.

"Q. And you have felt that because of the dangers that you have told us about? A. Yes."

• • • •

(174) • • •

"Re-direct examination by Mr. Zisgen:

"Q. Dr. Aeby, is it not a fact that the temperature of different parts of a ship varies during a voyage? A. The temperature will vary.

"Q. Yes. And even at the same moment is it not a fact that the temperature on a ship will vary in different parts of a ship? A. I have never taken the temperatures in different parts of a ship. I cannot answer that question.

"Q. Would you expect that the temperature inside the chart room on the bridge in the shade would be exactly the same as the temperature at the same moment on an open steel deck with the sun shining down brightly? A. The temperature will not be the same.

"Q. And which of the two under those circumstances would be the higher, would you expect? A. The open place.

"Q. The open deck? A. Yes.

"Q. Is it not also true that the temperature in an enclosed space on a deck, into which the rays of the sun penetrate and from the sides of which the heat of (175) the sun is reflected will be higher than the temperatures out on an unenclosed portion of the deck? A. It depends on the wind, if there should be wind, if I may say so.

"Q. If we assume that the enclosed place which I mentioned is protected from the wind, would it not follow that the temperature within that protected place would be higher than the temperature on the part of the deck across which the wind could sweep freely? A. Yes.

"Q. Now isn't it true, Dr. Aeby, that even at a tempera-

ture of 70 degrees Fahrenheit and 75 degrees Fahrenheit particles of naphthalene will be liberated into the air? A. Particles are always liberated into the air, as I explained before.

"Q. Because even at those temperatures it has an odor, has it not? A. I made no experiments of it, I could not tell.

"Q. Well, have you ever put camphor balls in your clothing, and camphor balls are made of naphthalene, are they not? A. Yes, pure naphthalene.

(176)

"Q. Pure naphthalene? A. Yes.

Page 15:

"Q. Isn't it a fact that even an ordinary house temperature of 65 or 70° Fahrenheit, you can smell the odor of the moth balls. A. Yes.

"Q. Then am I not correct in saying that at temperatures of 65, 70, 75° Fahrenheit particles of naphthalene are liberated into the air? A. That is correct."

* * * *

Deposition of CARLO VAN DEN BOSCH.

> Mr. Zisgen: The next, your Honor, is a different kind of deposition. It is the deposition of a Belgian lawyer, Carlo van den Bosch, * * *

"Direct examination by Mr. Zisgen:

"Q. Where do you live, Mr. van den Bosch? A. I live in Antwerp.

"Q. And where is your office?" And he gave the address.

(177)

"Q. What is your occupation? A. I am a lawyer-barrister.

"Q. Will you tell us where you were educated and what degrees you have? A. I was educated in the University of Brussels and got at graduation the degree of what we call Doctor in Law, by the Central Jury, in 1930.

"Q. And when did you become a member of the bar in Antwerp? A. Soon after, i. e. exactly in September, 1930.

"Q. Are you, or are you not, entitled to practice in all the courts of Belgium? A. I am entitled to practice in all the courts in Belgium, except the Court of Cassation."

• • • •

(178) • • •

"Q. Do you have some connection with the Comite Maritime International? A. I became secretary of that International body in 1947 and I am still acting in that quality.

"Q. Is that or is it not the international body of which the Maritime Law Association of the United States forms a part? A. It is right that the Maritime Law Association of the United States forms part of this Comite Maritime International, together with twenty other national associations of maritime law.

"Q. What is the purpose of the Comite Maritime International in general? A. The purpose of the Comite Maritime International is to try to get unification of maritime laws throughout the world.

"Q. Do you have some connection with the Diplomatic Conference of Maritime Law? A. I am, indeed, a secretary of the Diplomatic (179) Conference of Maritime Law, which purpose it is, as an inter-governmental body, to draft and sign international conventions on maritime law, based on the labors of the Comite Maritime International.

Deposition of Carlo van den Bosch—Direct

"Q. Do I understand, Mr. van den Bosch, that the Diplomatic Conference of Maritime Law is an inter-governmental body? A. That is right.

"Q. When was its last meeting? A. The last meeting was held in Brussels in May, 1952, where three conventions were brought about and signed, namely, on the civil and penal competence in matters of collisions and on (provision) arrest of the ships.

"Q. Was the United States represented at that conference? A. The United States was represented by an observer.

"Q. And who or what was the observer, if you recall? A. I cannot tell it by heart.

"Q. Do you engage in any teaching activities, Mr. van den Bosch? A. I am teaching maritime law in general at the Brussels University since 1951.

(180)

"Q. In the course of your twenty-five years as a member of the bar in Antwerp, have you or have you not been engaged in the practice of maritime law? A. Most of the cases which I had to handle were in fact maritime cases.

"Q. Can you tell us one or two clients from whom you have acted as a maritime attorney? A. I am acting regularly for the Compagnie Maritime Belge, for the ship owners' companies represented by the Agence Maritime Internationale, such as the Glenn Line, or the Canadian Pacific Railway Co. and United States Lines.

"Q. Now, Mr. van den Bosch, is the Kingdom of Belgium a party to the International Convention concerning rules relating to bills of lading, otherwise known as The Hague Rules Convention? A. Belgium has been represented at the Diplomatic Conference of 1924. It has

signed the convention on bills of lading and has ratified same by the Royal Decree of the 13th of July, 1927."

• • • •

(183) • • •

"Q. Under Belgian law, when goods are carried on deck and the provisions of The Hague rules are not applicable of their own force, is it possible for the parties of the contract of carriage to agree that The Hague rules shall govern the transportation of the goods? A. Outside the scope of the so-called Hague rules and the Belgian law of 28 November 1928, which is of public order, parties are at liberty to agree upon the conditions under which the carriage shall be performed. So they are entitled to make the Hague rules entirely or partly applicable to a cargo loaded on deck.

"Q. Does the Kingdom of Belgium have any other legislation in addition to the convention and the (184) law of November 28, 1928, bearing upon the responsibility of the carrier in instances in which goods are carried on deck? A. Besides the Hague rules and the law of November 28, 1928, Belgium has its common law, which is expressed in article 59 and especially with regard to deck cargo, article 66 of Book II of the Commercial Code."

• • • •

"Q. Under the provision of those articles, what is the obligation of a carrier for goods carried on deck? A. To answer this question, articles 59 and 66 are to be combined. In article 59 the general rule of the carriers' liability is laid down. In that (185) way the carrier is held liable for the goods which are under his custody. He only escapes liability if he proves that loss or damage to the goods occurred without his fault or negligence. Article 66 completes this rule and is dealing with goods stowed on deck. Under this provision the captain is

held liable for every damage whatsoever occurred to goods stowed on deck without the written agreement of the shipper. This provision is to be construed so that the captain is liable for such goods, even if the damage occurred without his fault. If the shipper agrees upon the cargo being loaded on deck, there is no more a general and irrefutable presumption of liability against the carrier, but such agreement does not exempt the carrier from giving all care to the goods, in order to prevent loss or damage to same, where on the other hand it is up to the cargo owner to prove that the damage or loss occurred as a result of a fault or a negligence of the captain or the crew.

"Q. You used the term 'the captain' several times. In Belgium when you use 'the captain' to whom does that refer? A. Under Belgian law the captain is considered the legal representative of the shipowner. In our (186) juridical language we generally use 'captain' in the place of shipowner."

• • • •

---

(192) • • •

Deposition of Dr. A. C. W. Beerman.

Mr. Zisgen: The next deposition, your Honor, is that of a Dutch lawyer, Dr. A. C. W. Beerman, • • •

(196) • • •

"Direct examination by Mr. Zisgen.

"Q. Where do you live? A. In Rotterdam.

"Q. What is your occupation? A. I am an advocate in this city since 1925.

"Q. Are you a member of any law firm? A. I am a

member of the firm of Drs. Nolst Trenite, Beerman, Bergsma & Baanders.

"Q. Will you tell us something of your education and preparation for your profession? A. I followed the gymnasium in Amsterdam and thereafter studied law at the University of Leyden. I was admitted to the bar at Rotterdam in 1925. I was a junior partner in a firm at that time called Drs. Jacobson Nauta, Van Walsum & Vlug. In 1930 I became a senior partner at my present office.

"Q. Did you receive any degree? A. Yes, I took my doctor's examination at Leyden.

"Q. And what degree did you receive? A. We call it Master of Law.

(197)

"Q. Are you admitted to practice in all of the courts of the Kingdom of the Netherlands? A. Yes.

"Q. Since your admission to the bar have you continually practiced law until the present time? A. Yes, that's correct.

"Q. Have you specialized in any particular field of the law since your admission to the bar? A. I have specialized on maritime matters, and also matters of industrial property.

"Q. Throughout your career? A. Yes.

"Q. Are you a member of any legal societies which have the field of maritime law for their principal object? A. I am a member of the Netherlands Association for Maritime Law, which is a branch of the Comite Maritime International, and a member of the Board of the Dutch Branch of the International Law Association.

"Q. Are you also a member of any association of lawyers in the Netherlands? A. I am a member of the Netherlands Juridical Association (Nederlandse Juristen

Vereniging), and a member of the Netherlands Association of attorneys."

• • • •

(199) • • •

"Q. Under the laws of the Netherlands may the parties to a contract of ocean carriage lawfully provide that their contract may be governed by the Hague Rules in whole or in part, even though the Kingdom of the Netherlands is not a party to the convention itself? A. They can do so."

• • • •

(200) • • •

"Q. Under the law of the Netherlands what is the responsibility of an ocean carrier with respect to cargo carried on deck with the permission of (201) the shipper? A. According to art. 470 the carrier is always responsible for damage caused by rough handling or insufficient custody of the goods, no matter where the goods are shipped, on deck or not. Of course, if the goods are shipped on deck with the special permission of the shipper, then he cannot complain because of the mere fact that the goods were stowed on deck, but the carrier remains always obliged to take proper measures for the protection and the safety of the goods stowed on deck.

"Q. And by proper measures, what do you mean? A. Proper measures mean that stowage must be in accordance with the legal provisions and with normal standards of good stowage.

"Q. Are those standards, standards which take into account the quantity of the goods and their characteristics, or are they not? A. Certainly, both elements have to be taken into account.

"Q. May an ocean carrier under the law of the Netherlands exempt itself by contract from liability for negli-

gence in the stowage of cargo which is carried on deck with the permission of the shipper? (202) A. No, he remains responsible for proper stowage."

• • • •

"Q. What factors do the Netherland Courts take into account in determining whether stowage of goods is proper or is negligent? A. All relevant factors, quantity of the goods, question of other goods already on board, question of the packing.

"Q. Are there any statutes or decrees of the Kingdom of the Netherlands relating to the stowage and carriage of dangerous cargoes? A. Yes. We have the Shipping Law, which was made in 1909 and thereafter changed, but the main part remained the same, and pursuant to that Shipping (203) Law there are various Royal Ordinances. The Law authorizes the Crown—i. e. the minister concerned—to issue general ordinances and we have under that Shipping Law, Dutch 'Schepenwet,' a Royal Ordinance called in Dutch 'algemene maatregel van bestuur,' which is known as the 'Schepenbesluit,' Shipping Decree.

"Now, the Shipping Law provides in art. 4 that the captain is obliged before starting a voyage to see to it that the loading, the stowage and the ballasting of the ship comply with the requirements of seaworthiness and safety.

"I have quoted the 'Schepenwet' in the edition Schuurman & Jordens Nr 16.

"Q. Are the laws and ordinances to which you have just referred laws and ordinances which were in effect in July 1952? A. Yes.

"Q. Are there in the laws and ordinances to which you have just referred any definitions of dangerous cargoes other than liquids? A. There are.

"Q. And what is or are those definitions? A. In the Shipping Ordinance which was operative in June and

July 1952, art. 94 deals with (204) dangerous goods. This article says that as dangerous goods are considered solid goods which can easily be brought to ignition or which when heated to 70°C can give off inflammable gases. These goods must be packed in gas-tight packings. When they are loaded on deck they should not be exposed to direct rays of the sun.

"Q. Do you have with you a copy of art. 94? A. I have it here before me."

(205) • • •

"Q. Were there in effect in June and July 1952 any laws or regulations of the Kingdom of the Netherlands which specifically regulate the stowage of naphthalene by name? A. Yes.

"Q. And what are those regulations or laws? A. In July 1952 there was in force a regulation for the carriage of naphthalene which I quote in English translation:

> 'Naphthalene must be packed in bags of close weave, wooden or steel drums or cases, which must be closed in such a way that the coming out of the contents can be adequately prevented. The stowage may take place on or under deck. On deck naphthalene must be protected against the influence of sun rays and must be kept away from the men's quarters. Under deck naphthalene must be stowed in well-ventilated dry space. In both cases naphthalene should not be stowed together with explosives, gases under pressure, or goods which when moist give off combustible gases, or with goods which are liable to heating or self-combustion.'

(213) • • •

"Q. Was the regulation which you have just translated to us contained in any written or printed book or pamphlet in July, 1952? (214) A. I think the rules which the Shipping Inspection applied it is the intention to have them published together in a book Dangerous Cargoes, but so far as I know that publication has not yet been completed.

"Q. Was there in July, 1952 any way in which a shipper or a carrier could ascertain what regulations were in force with respect to the carriage of naphthalene? A. Certainly. He could get all the information at the Inspection of Shipping and at the General Inspection in The Hague. There is an office of the Shipping Inspection at Rotterdam.

• • • •

(216) • • •

"Q. In 1952, did you have any connections or any position which afforded you an opportunity to know whether or not shippers and carriers were aware that by application to the Shipping Inspection they could ascertain what regulations there were concerning the carriage or stowage of dangerous goods and particularly of naphthalene? A. I have many contacts with shippers and carriers in the port of Rotterdam in my function as President of the Foundation 'Havenbelangen', that is the foundation which has to promote the general interests of the port of Rotterdam. I am also a member of the Board of Directors of two shipping companies. On the strength of my experience I am inclined to state that the function of the Shipping Inspection is very well known in this port because of its close relations with the shipping world.

• • • •

(219) * * *

"Q. In instances in which goods are not specifically mentioned by name in a statute or regulation of the Netherlands, and in which the Shipping Inspection or the Inspector General of Shipping has no regulations applying to stowage or carriage of such goods, to what sources do the courts of the Netherlands look for standards to apply as to stowage and carriage of such goods? A. They may appoint experts, nautical experts, captains of sea-going ships with great experience, or they may also place trust in handbooks about stowage.

"Q. When the goods themselves are chemicals, is (220) there any other source of information to which they may look? A. They may ask chemical engineers.

"Q. Is there any commentary or handbook dealing with the stowage and carriage of books which is commonly referred to by Courts in The Netherlands or authorities in The Netherlands? A. In many questions of stowage we quote a book called 'Loading,' that is the leading handbook in The Netherlands, written by Mr. Noordraven, teacher to a nautical college. I have a copy of that book here.

"Q. Does that book contain any definition of highly inflammable goods and particularly of coal tar products? A. Chapter 2 is dedicated to the stowage of dangerous goods. It mainly refers to liquids. On page 97 are mentioned goods which are highly inflammable, such as spirits, naphtha, etc. It is stated there that the relevant article of the Royal Ordinance (this book was published in 1928 so this refers to another ordinance than the one valid in 1952) at that time does not give a definition as to which goods have to be considered as highly inflammable, and that it is very often a question of degree. Most times liquids which when heated (221) up to 30 . give

off inflammable vapors which when mixed with air become explosive, are considered as highly inflammable.

"Then he quotes a Royal Ordinance of 1885 and of the 23rd of March, 1903, which mention as highly inflammable all products of tar and tar oil, in so far as the point of ignition when defined with the apparatus of Pensky lies below 80°. I refer to what is printed on page 98."

* * * *

(222) * * *

"Cross-examination by Mr. Stonebridge:

"Q. Do you have a harbour master in Rotterdam? A. We have.

"Q. What is his function? A. We have two. We have the municipal harbor master and we have a government harbor master (Rijkshavenmeester).

"Q. In effect you have a municipal and a national harbor master. (223) A. National is not the right word, he is appointed by the national government.

"Q. What are their functions? A. The municipal harbor master has the control of the harbor basins, the docks, which are municipal. He can give directions to the ships about their mooring. He can give indications that a dock is so crowded that for the time being no more ships are allowed. He is the chief of the Municipal Harbor Pilot Service. Whereas the harbor master appointed by the Government has the control of the river, which is maintained and dredged by the Government. The harbor master exercises no control with respect to stowage, that is the task of the Shipping Inspection. Under the Shipping Law we have the Inspector General of Shipping, who has his office at The Hague, and at various places, Rotterdam, Amsterdam, etc., local shipping inspectors. Their duty is to see to it that the provisions of the Shipping Law and of the Ordinances promulgated pursuant to that law are respected.

Deposition of Dr. A. C. W. Beerman—Cross

"Q. It is correctly understood from what you said that the harbor masters have no control or no direct interest in the safety on the harbor with respect to goods which may be carried or may not be carried? (224) A. That they have no control whatsoever with respect to the safety of goods is perhaps somewhat exaggerated. The harbor master may exercise a certain control in respect of the local regulations which are in force to prevent fires in the docks, in the sheds. But as I have said before it is not the task of the harbor master to control the stowage on board ships.

"Q. Could you say that it would or would not be likely that the harbor master would know what regulations exist, what royal ordinances have been issued with respect to stowage of particular commodities? A. I wonder whether the harbor master will know the details of the ordinances issued pursuant to the Shipping Law. It is not his task to know them.

"Q. Would you say that if people in shipping circles in general were aware of the existence of a particular regulation with respect to stowage, the harbor master also would be aware of such regulations? A. I would say no, because the harbor masters have very often no experience in the management of ships. I may add that our present harbor master was a former officer of the Navy.

"Q. Who is your present harbor master, appointed by the local authorities? (225) A. Captain Leeuwen.

"Q. Before his appointment as harbor master he held the rank of captain in the Netherlands Navy? A. That is correct.

"Q. Getting down to the regulation which you mentioned as being in effect in June-July, 1952 with respect to the stowage of naphthalene, did I understand you correctly to state that that regulation had not been published in July 1952? A. Not in a royal ordinance.

"Q. Is it not a fact that the regulation with respect the stowage of naphthalene has not as yet been published in any official regulation, decree, ordinance or law? Is it not a fact that when, if and whereas a royal decree, ordinance or law is published by the Netherlands having particular reference to the packing and stowage of naphthalene the language as translated by you may or may not be the final language as approved by the Government? A. What I read out to you was a provision of the Shipping Inspection for naphthalene.

"Q. Was that an actual or a proposed provision? A. So far as I know an actual provision, but under the Royal Ordinance the Shipping Inspection is entitled (226) to issue special provisions with respect to various dangerous goods. It has been provided that all these special provisions shall be published together in a book under the title Dangerous Goods. The book containing the total provisions which have been issued has not yet been published.

"Q. Has in fact there been an official issuance of the language referred to by you in any decree or publication of whatever form it takes in the Netherlands? A. I think it is a directive of the Shipping Inspection, which has not been published in the same way as royal ordinances. I am not sure whether it has been issued in circular letters or published in technical papers. I should have to inquire of the Shipping Inspector whether this is an answer to a request for information or whether they have circularized this special provision or published it in a technical paper.

"Q. On the subject of general jurisprudence in the Netherlands, is it customary for a law, decree or regulation of any form to become effective before it is officially published? A. If it is a law in the formal sense of the word it must be published in the 'Staatsblad'. But (227) we have all kinds of general provisions, royal

ordinances, ministerial decisions, directives of government bodies, for instance of the customs, shipping inspections, etc. I can only say that laws, royal ordinances, ministerial resolutions are always published either in the Staatsblad or in the Staatscourant, both official publications.

"If I want to be informed about official directives I cannot always find them published in either of those publications.

"Q. With respect a general regulation applying to an industry as a whole, is it required under the law of the Netherlands that that regulation is published? A. Not always, it depends on the circumstances. A directive which is binding for a branch of industry is not always published in such a way as a royal ordinance.

"Q. But such general regulation affecting an entire industry is in normal course published in some form or other? A. That may be true."

• • • •

(229) • • •

"Q. Getting back to the earlier testimony with respect harbour masters in the port of Rotterdam, (230) specifically the harbour master who was formerly a captain in the Royal Navy, would you say in your opinion, Dr. Beerman, that he would be more familiar with the duties of a harbour master than you? A. I think so.

"Q. If that particular harbour master—this is hypothetical—had written a letter in November of 1953 and in that letter he had stated that it was a part of his duties to ascertain what restrictive rules or regulations existed concerning the handling of dangerous goods in the port of Rotterdam, and whether those regulations were being observed, would you say that that was probably a true statement? A. That is a correct statement.

"Q. If in that same hypothetical letter the harbour master stated with regard to shipments of naphtalene in bags 'I hereby declare that no rules or regulations are in force here concerning this commodity and accordingly this office does not interfere with the handling of it,' would you say that that was a true statement? A. No. Insofar it may be true, but by its incompleteness may give rise to misunderstanding. When you asked me first about the task of the harbour (231) master, I told you that he had to see to it that the harbour regulations were observed. Now, the harbour regulations, 'Havenverordening,' contains certain provisions about the handling of goods, but not about the stowage of these goods on board of seaships, but about the storage of these goods. Dangerous cargoes and highly inflammable cargoes can only be stored at certain places and in sheds with special equipment. When the harbour master has stated that he knows of no special provisions in respect of the handling of naphthalene he must have referred to the local regulations about the storage of naphthalene in sheds. If he referred to the stowage on board seaships he would have surpassed the limits of his task. Is that clear?

• • • •

"Re-direct examination by Mr. Zisgen:

"Q. Dr. Beerman, is the regulation, as I will call it, which is set out in Beerman Exhibit 3 for identification such a type of regulation that it must be published in printed form in order to be in effect? A. I don't believe that a special form of (232) publication is required. I refer to article 94 par. 11a authorizing the chief of the Shipping Inspection to issue additional provisions about the stowage and packing and the volume of the goods referred to in that article if he deems necessary to do so. There is no special form of publicity prescribed.

He may also give such an additional provision to my view in a letter to a special carrier.

"I wish to add that in par. 13 of the quoted art. 94 of the Royal Decree which was in force in June/July 1952, it has been provided that there will be an enumeration of dangerous cargoes with additional provisions about stowage and packing in a book with the title 'Dangerous Cargoes,' but that publication has on account of various reasons been delayed.

"Q. And those two paragraphs of art. 94 to which you have referred appear, do they not, in the book which has been marked Beerman Exhibit 2 for identification? A. That is so."

• • • •

---

(233) • • •

Deposition of Dr. Sjur Braekhus.

Next, your Honor, is a portion of the deposition of Dr. Braekhus, • • •

"Direct examination by Mr. Pyne:

"Q. • • • What is your occupation? A. I am professor of law at the University, Oslo.

"Q. How long, Professor, have you been in that occupation as Law Professor? A. I was made a Professor of Law in January 1948—about 7½ years."

• • • •

(238) • • •

"Cross-examination by Mr. Zigsen:

"Q. Is it permissible under the law of Norway for the parties to a contract of ocean carriage of cargo to

stipulate that their contract shall be governed in whole or in part by the Hague rules, (239) in instances in which the Hague rules do not apply of their own force? A. Yes, it is permissible.

"Q. Is there in effect in Norway any Law, Statute or otherwise, relating to the responsibility of an ocean carrier with respect to goods carried on deck with the permission of the shipper? A. Yes.

"Q. What, in general, is the responsibility of an ocean carrier with respect to goods carried on deck with the shipper's permission? A. The carriage on deck, then it falls outside the Hague Rules and the Norwegian carriage of goods by sea Act, and therefore is covered by the Maritime Code.

"Q. And what does the Maritime Code provide with respect to that? A. The shipper and the master of the ship should use ordinary case in stowing and transporting the deck cargo. There is no special rule, but on the other side there is complete freedom of contract, and the shipowner may contract out of his responsibility for deck cargo.

"Q. Then do I understand that in your opinion, a carrier may under the law of Norway by contract (240) exonerate himself from all responsibility for cargo carried on deck with the shipper's permission? A. For all responsibility as far as the faults of the master and the crew are concerned. As far as his personal faults are concerned, I think the Norwegian Court would not accept a limitation of liability for his wilful causation of damage, or for cases of gross negligence. The last point is not quite clear, but I think there is no clear authority on that point, it is the general opinion in the doctrine."

* * * *

(241) * * *

"Q. Doctor, there is nothing in the law of Norway which relieves Norwegian vessels and Norwegian carriers of ob-

ligations imposed upon them by the laws of foreign states into whose waters they trade, is there? A. There is no special rules."

• • • •

(242) • • •

"Q. The fact that a particular commodity is not mentioned by name in any regulations concerning loading or stowage does not in Norwegian law relieve the carrier of its obligation to load and stow that cargo carefully, does it? A. No, it does not.

"Q. Naphthalene is inflammable, is it not? A. Yes."

• • • •

---

(246) • • •

Deposition of PEDRICK D. HERLOFSEN.

Mr. Zisgen: The next deposition, your Honor, was that of Pedrick D. Herlofsen. • • •

"Direct examination by Mr. Pyne:

"Q. Mr. Herlofsen, where do you reside? A. Oslo.

"Q. And what is your occupation, Mr. Herlofsen? A. I am shipowner.

"Q. And as a shipowner, do you have an association or connection with any particular firm, (247) corporation, limited society or steamship company of any kind? A. I am one of the directors of Sigurd Herlofsen & Co. A/S.

"Q. Will you tell us whether that company is a corporation, limited society, partnership, and where its principal office is? A. It is a limited company, with principal offices in Drammensveien 88b.

"Q. Is that the premises where we now are? A. Yes, that is right.

"Q. What, please, is the type of business that is done by that company? A. That is, in short, shipowning business.

"Q. And do they act as an agent or manager for owners or vessels? A. They act as managers for all the companies that own ships in our concern.

"Q. That is, all the companies that do business through Sigurd Herlofsen, for those companies or vessel owners Sigurd Herlofsen & Co. A/S acts as a manager, as you call it? A. Correct.

"Q. And as a manager, will you tell us precisely (248) what type of thing they do for the shipowner? A. Well, they do all the work necessary with regard to operations of the ships.

"Q. And, for example, what would that be? A. For example, at Sigurd Herlofsen & Co's office they employ the crew, they arrange the insurance, arrange repairs, maintenance, chartering, new building contracts, bylaws, etc.

"Q. Do you know who the owner was of the motor vessel named and called the "Black Gull", who the owner of that vessel was in June and July, 1952? A. That was Skibs A/S Jolund registered in Moss, Norway.

"Q. And is that company, which you have just mentioned as being the owner, a corporation, limited company or partnership? A. A limited company.

"Q. Are you personally in any way connected with that company? A. Yes.

"Q. In what way or capacity? A. Since 1931 I have been a member of the Board, and since 1953 I have been Chairman of the Board.

"Q. And when you say Board, are you referring (249) to the Board of Directors of that vessel owned by that

company that you mentioned, that limited liability company of Moss? A. Yes."

• • • •

"Q. I am going to show you another document, but I first will ask the reporter to mark it as an exhibit for identification. I am going to show you a document which has just been marked 'Jolund Exhibit 10, today's date' and I will ask you if you can identify that document? A. Yes, that is a copy of a charter party between Skibs A/S Jolund and Black Diamond Steamship Corporation.

"Q. The date of it is what? A. 3rd September 1949.

"Q. And I notice down at the bottom there are some initials. Can you tell me whose initials they are? A. The one on the left is S. H., my father's initials.

"Q. And you father's full name? A. Sigurd Herlofsen.

"Q. And at the time of that charter, what connection (250) did your father have with Sigurd Herlofsen & Co.? A. He was the managing director of Sigurd Herlofsen & Co.

"Q. And is your father now deceased? A. He is deceased.

"Q. At the time this charter was made you, however, were connected with the company? A. I was director in Sigurd Herlofsen & Co.

"Q. As of today you are the managing director of Sigard Herlofsen & Co.? A. Correct."

• • • •

"Q. What does the owning company, which for short I will call Jolund, actually do? A. The company itself is not active in business as long as the management is left to Sigurd Herlofsen & Co. A/S."

• • • •

Deposition of Pedrick D. Herlofsen--Direct

(251) • • •

"Q. When you say they are not active, what passes, if anything, back and forth between the owner company Jolund for short, and Sigurd Herlofsen & Co.? A. I can put it this way. All remittances coming in for any earnings made by the vessels owned by Jolund, goes into Jolund's account. All payments made for disbursements are made out of Jolund's account, but everything is supervised by Sigurd Herlofsen & Co., and the Board of Directors of course every year in the Jolund agree the yearly account and all the statements."

• • • •

(253) • • •

"Cross examination by Mr. Zisgen:

"Q. Mr. Herlofsen, how long have you personally been connected with the shipping business? A. Since January, 1929.

"Q. You agree, do you not, that fire is a constant threat to any ship? A. Yes, we have seen samples of that.

"Q. And you agree, do you not, that any prudent ship operator must continuously take precautions against the outbreak of fire on ships? A. The Norwegian laws in that respect was very strict. We have always followed the laws of ship control and the classification institute.

"Q. And apart from the requirements of law, it is a fact, is it not, that the interests of ship operators (254) themselves require them to take all possible precautions against fire on board their ships? A. Yes, that is correct.

"Q. And to take those precautions continuously? A. Yes, that is correct."

• • • •

Deposition of Pedrick D. Herlofsen—Cross

"We are engaged as Managing Owners of the Jolund at a stipulated fee per annum, but always subject to the provisions of the Shipping Company Act."

• • • •

"Q. Mr. Herlofsen, in June or July 1952, did Sigurd Herlofsen & Co. have any financial interest in Skibs A/S Jolund? A. That I cannot tell, but I know that I personally, my father and my partner had a financial interest.

"Q. That is, you, your father and your partner constitute all the owners of Sigurd Herlofsen & Co.? A. Not at that time. My mother had shares at that time.

(255)

"Q. Excluding your mother, you, your father and your partner all had a financial interest in Jolund? A. No, in Herlofsen.

"Q. No, my question was first of all, had Herlofsen a financial interest in Jolund, and you told me you did not know. A. No, I don't remember.

"Q. As at the same time, did you personally have an interest in Jolund? A. Yes.

"Q. Do you know whether your father had or not? A. Yes.

"Q. Do you know whether your father's partner had or not? A. He did.

"Q. And do you know whether your mother had or not? A. That I do not know."

Then I skip two or three questions:

"Q. Was the extent of your majority—and I mean you, your father and your partner—such that the three of you together could outvote all other stockholders, whether holders of preferred shares or common stock? (256) A.

I cannot answer that, but I think it is correct what you say.

"Q. And both you and your father at that same time, June and July, 1952, were directors of Jolund, were you not? A. That is correct.

"Q. Your father was the Managing Director? A. He was Chairman of the Board.

"Q. Was there a Managing Director? A. Well, I think I answered that question saying he was Chairman of the Board, which I mean to be Managing Director."

• • • •

"Q. And was your partner also a director in June and July, 1952? A. He was.

"Q. How many directors were there of Jolund at that time? A. I think there was five.

"Q. And Sigurd Herlofsen, does it only have four partners? A. Three partners.

"Q. I thought you said your mother? A. She had shares, but was not on the Board of (257) Directors.

"Q. Only you, your father and your partner as directors of Sigurd Herlofsen & Co. A/S in June-July 1952? A. No, my father was dead at that time.

"Q. So there were only the two of you? A. Correct.

"Q. And I take it that the whole financial interest in Sigurd Herlofsen & Co. at that time was vested in the estate of your father, in yourself, in your mother and in your partner? A. That is correct."

• • • •

"Q. You do know, do you not, that the 'Black Gull' in June and July, 1952, had accommodations for a number of passengers? A. Yes.

"Q. And in the charter party Jolund Exhibit 10 for identification you granted permission to the charterers to carry passengers? A. Correct.

"Q. You anticipated that the charterers would probably avail himself of that permission? A. Yes.

(258)

"Q. Did you know in June and July, 1952, that passengers had been carried on the 'Black Gull' on previous voyages under the charterer? A. I know the ships have carried passengers, but I cannot remember whether that was before or after she entered the Black Diamond service."

• • • •

"Q. Did you understand that Sigurd Herlofsen & Co. relied on the master of the ship to see that cargo which was forbidden by the charter was not loaded? A. We relied on the captain to that extent."

• • • •

(260) • • •

"Q. Now, you know of course that the 'Black Gull' in operating for Black Diamond Steamship Corporation under this charter, would operate in ports of Germany, Holland, Belgium and the United States? A. Yes, we did.

"Q. And you knew that each of these countries had, or might have, laws regarding the operation of the ship? A. Yes.

"Q. And you knew that each of these countries might have laws with respect to what cargo could be carried, did you not? A. Yes. That was why we could not issue any instructions here.

"Q. And you knew that each of these countries had, or might have laws, with respect to the manner in which certain cargo could be carried, did you not? A. Yes.

"Q. What familiarity did you or Sigurd Herlofsen & Co. have in June and July 1952 concerning any of those laws, Mr. Herlofsen? A. We were not familiar with the different countries' laws to any extent.

"Q. Well, had you at that time made any effort (261) to find out what those laws required? A. No; I do not think we had.

"Q. You personally had not, I take it? A. I personally had not.

"Q. And so far as you know, neither anyone in the office of Sigurd Herlofsen & Co. had? A. They might have learned things I did not know about, but I cannot answer that question.

"Q. The company, as a company, had made no effort to familiarize itself with those laws, is that correct? A. That, I believe, is correct.

"Q. You knew that on every voyage the vessel would touch at U. S. ports? A. Oh, yes, definitely.

"Q. Did you or Sigurd Herlofsen & Co. have a copy of the U. S. Coast Guard Regulations concerning the transportation of explosives and other dangerous goods? A. We might have, but not to my knowledge.

"Q. You personally have never seen it? A. I have never seen it.

"Q. You personally have made no effort to obtain them? A. No."

• • • •

(262) • • •

"Q. • • • You told us that you knew that passengers would be carried on the 'Black Gull'? A. Yes.

"Q. And you said, I think, that you probably were aware that they had been carried on voyages of the 'Black Gull' prior to June July, 1952? A. I believe I answered that question saying that I knew passengers had been carried on 'Black Gull' but I could not say whether it was before or after the time charter with the Black Diamond.

"Q. • • • In selecting the officers of the vessel, you did not refuse to employ officers who smoked, did you? A. That is a question you cannot ask an officer, and I do not

think you have a legal background to refuse to hire a man because he smokes.

"Q. Well, whether you have a legal right to do so or not, you did not in fact limit your selection of officers or crew to men who did not smoke, did you? A. Then I would not be able to man the ship.

"Q. The answer, I take it, is no? A. That is correct.

"Q. And so far as you know, there were no regula-
(263) tions on your ships forbidding them to smoke on the ship. A. Most definitely there were. There was painted signs on the ship.

"Q. Forbidding the officers and crew to smoke at any time or place? A. Not particularly the officers and crew, but there was painted signs in certain places on the ship saying 'No smoking.

"Q. But those signs were not intended to forbid all smoking everywhere on the ship at all times? A. No, you could hardly expect that.

"Q. In other words, you anticipated that the officers and crew, and the passengers, might at some times and places smoke on the ship, is that not correct? A. We anticipated that, yes.

"Q. You provided ash trays in certain places? A. We did.

"Q. You set aside one room by name as a smoking room? A. Yes. That does not necessarily mean that there was only going to be smoking in that room, but so far as I can remember, we had printed or painted notices warning the passenger and the crew against (264) smoking.

"Q. But you did not, through instructions to your officers, endeavor to prevent all smoking on the ship? A. If we had instructed that there would be no smoking on the ship we would not be able to carry a single passenger.

"Q. Now, you did not limit the passengers, or attempt to limit them to one particular portion of the ship during

the voyage, did you? A. You mean limit the passengers' admittance to certain places on the ship?

"Q. That is right. A. As far as I know, we had a sign on all our ships saying 'No admittance on the bridge'.

"Q. But aside from that there was no strict regulation preventing them from going elsewhere on the ship than the bridge? A. I would take it for granted passengers would not be allowed to visit the crew's cabins.

"Q. And excluding the bridge and the crew's cabins, and perhaps the cargo holds? A. They were closed anyway.

"Q. The passengers were not prohibited from going elsewhere on the ship? (265) A. No.

"Q. And you anticipated that they might from time to time go other places than their sleeping cabins? A. Oh, definitely.

"Q. They might go forward on the main deck to look out over the bow, they might go aft on the main deck to look out over the stern? A. Yes.

"Q. That you anticipated? A. Yes.

"Q. You did not fence off any part of the main deck to prevent them physically from going on it, did you? A. There was no instructions from here, but I would take it for granted that if the ship had deck cargo the passengers would not be allowed to walk on the deck cargo.

"Q. To walk on it? A. Yes.

"Q. But if they did not walk on it, they might go beside it? A. That all depends on the nature of the deck cargo.

"Q. What difference would the nature of the deck cargo make? (266) A. Well, I would say, first, if you carried a deckload of lumber, it might be dangerous for the passenger to get close.

"Q. Because of the danger that it might fall on them? A. I should say so—that is just my guess.

"Q. I take that that you left largely to the master's discretion? A. Obviously, yes.

"Q. You did not provide any sandboxes or things of that sort on the open decks of the 'Black Gull' for the extinguishing of cigarettes or cigars? A. That would be quite contrary to our instructions, for our instructions for passengers, to smoke on deck.

"Q. Well the answer is that you did not? A. We did not, to the best of my knowledge."

• • • •

"Q. In effect, the authority of the owner of the 'Black Gull' with respect to what cargo was to be carried, and how it was to be carried, was vested in the (267) master and in Black Diamond? A. I would say vice versa—Black Diamond and the master."

And then at the top of page 39:

"Q. And then, in the hierarchy of Sigurd Herlofsen & Co., the master is the person with the highest authority to determine these things? A. Because he is the only man who can do so, being on the spot.

"Q. And there is no one higher than he in Sigurd Herlofsen & Co. who can exercise that authority? A. No, I do not think there is, according to Norwegian law.

"Q. Whether as a matter of law or not, as a matter of practice it was the master who was the highest ranking employee of Herlofsen & Co. who determined, or at least exercised a veto power over the acceptance of cargo and its stowage? A. Yes, that is the only practical way of operation.

"Q. And that system did exist for the whole period of this charter? A. For the whole period of the charter."

(268) * * *

Deposition of Capt. Inge Svendsen.

This is part of the cross-examination of Captain Svendsen, * * *

"Cross examination by Mr. Zisgen:

"Q. You told us that you had never discussed what cargoes were carried on the 'Black Gull' or on any other vessel under charter to Black Diamond Line, and had never heard any discussion of what cargoes were carried on such vessels, did you not? (269) A. I do not know whether that is correct. I had never heard any discussion between the master of any of the vessels and any of the directors or the owners, rather.

"Q. How about discussions between the masters of such vessels and yourself, captain? A. Oh, yes, I knew definitely that naphthalene was carried.

"Q. And you knew that from the masters of the ships under charter to Black Diamond which carried it? A. Yes. On my trips I saw the naphthalene carried on deck.

"Q. And was the naphthalene which you saw carried on deck covered in any way? A. No.

"Q. On no occasion? A. On no occasion.

"Q. On how many occasions did you see naphthalene carried on deck on Herlofsen's ships chartered to Black Diamond, uncovered? A. Well, it will be very difficult to say exactly but I should think I have seen that at least ten or twelve times.

"Q. And were those ten or twelve times (270) which occurred during the period covered by the charter part of the 'Black Gull', which has been marked as Johnd Exhibit 11 for identification? A. Yes, I would say that during that period I would probably have seen it for at least ten times."

* * * *

"Q. Now, during the period from 1949 to 1952, when you were assisting Captain Wellton, did you on any occasion see naphthalene stored on deck of a Herlofsen ship chartered to Black Diamond, uncovered? A. Yes.

"Q. On how many occasions? A. Well, as I said, I would say about eight or ten occasions at least. Well, let us say ten occasions about.

"Q. Ten occasions during that period? A. Yes."

• • • •

(271) • • •

"Q. You, as Captain Wellton's assistant during that period, knew that Black Diamond was accustomed to carrying naphthalene in that fashion? A. Yes, I knew it."

• • • •

---

(359) • • •

FRITJOV ANDERSEN, called as a witness on behalf of Libelants, having been duly sworn through the interpreter, testified as follows:

Direct examination by Mr. Longley:

• • • •

(360) • • •

Q. Captain, you live in Norway? A. Yes, sir.

Q. And you were master of the "Black Gull" on her last voyage? A. Yes, sir.

Q. You have never seen me before you took the stand here, have you? A. No, not til two days ago I saw you in court here.

Q. Oh, you were in the court when the case opened? A. Yes.

Q. And you never saw Mr. Zisgen (indicating)? A. No, sir.

Q. And neither he nor I have interrogated—that means questioned—you in any way about this case or anything else? A. No, sir.

Q. We never talked with you in any way? A. No.

Q. You have been brought to this country by the (361) owners or the former owners of the "Black Gull"? A. Yes, sir.

Q. To testify in this case? A. Yes, sir.

Q. How long had you been master of the "Black Gull" before her last voyage? A. I have been approximately two months master on the "Black Gull".

Q. Only two months. A. Yes, sir.

• • • •

(362) • • •

Q. Captain, how long have you had Norwegian Master's papers? A. From February 1946.

Q. And before that time you worked up through the grades, from third mate, second mate, first mate? A. Yes, sir.

Q. So how many years have you been at sea? A. I started at sea in 1922.

Q. 1922? A. Yes.

• • • •

(363) • • •

Q. Captain, going back to the last voyage of the "Black Gull", at the time of her stowage, the stowage was laid out by Captain Hollaar of Black Diamond Steamship Company, was it not? A. Yes, sir.

Q. She loaded at the two German ports of Hamburg and Bremen first, did she not? A. Yes, sir.

Q. And there general cargo was stowed in her holds? A. Yes, sir.

Q. And then she proceeded to Antwerp? A. Yes.

Q. And there other general cargo was loaded in her holds? A. Yes.

Q. And naphthalene was loaded on the ship's decks, (364) is that not correct? A. Yes, sir.

Q. The stowage of the naphthalene on deck was laid out by Captain Hollaar, as to where and how it was to be stowed, is that not true? A. Yes, sir.

Q. And then he showed you how he planned to stow the naphthalene, did he not? A. Yes, sir.

Q. And you approved it. A. Yes, sir.

Q. Then the vessel proceeded to Rotterdam and at Rotterdam——

(Witness nods head)

Q. Answer audibly, Captain, if you will. A. Yes.

• • • •

Q. And at Rotterdam, in addition to general cargo, some more naphthalene was stowed on the ship's decks? (365) A. Yes, sir.

Q. Captain, how many tons of naphthalene were stowed on the decks of the "Black Gull"?

• • • •

(366) • • •

Q. Captain, I lay before you a stowage plan heretofore marked Libelants' Exhibit 11-A, which you may examine at any time you wish (handing to witness). A. Thank you.

(The interpreter speaks with the witness.)

Q. Now, can you tell us first, Captain, how many bags of naphthalene were stowed at Antwerp?

(Witness examines)

Q. And the tonnage that was then there stowed on the deck, if you can get it from that plan. A. There was on the aft deck abeam of No. 4 hatch, was 605 bags, approximately 61 tons.

Q. Approximately how many tons? A. 61.

Q. 61 tons? A. Yes.

Q. And how many tons were stowed forward? A. That was all stowed on the after deck, 61 tons at Antwerp.

Q. There were only 61 tons stowed aft at Antwerp? A. Yes.

(To the interpreter) Yes.

(367)

Q. And then at Rotterdam how many bags and how many tons of naphthalene first were stowed on the after deck? A. On the after deck was stowed 210 bags of naphthalene, 203 tons.

Q. Now, there is something wrong. A. No, 2,010 bags.

Q. 2,010 bags weighing 203 tons? A. Yes.

Q. And where on the after deck were those bags stowed? A. That was stowed further back from the naphthalene from Antwerp.

Q. And how many bags and tons of naphthalene were stowed forward at Rotterdam? A. 3,333 bags, 305 tons.

Q. So that when you eventually sailed from Rotterdam the only naphthalene you had forward were those 3,333 bags stowed at Rotterdam? A. Yes, sir.

Q. While aft you had the 2,010 bags—was it— A. Yes, sir.

Q. —stowed at Antwerp—and what was the other number of bags? A. 605.

(368)

Mr. Pyne: 605 bags stowed at Antwerp.

Q. Yes, 605 bags stowed at Antwerp and 2,010 bags stowed at Rotterdam. A. Yes, sir.

• • • •

Q. Captain, I lay before you an outline plan of the "Black Gull", marked Libelants' Exhibit 17 (handing).

Now, there has been considerable talk here about Hatch No. 4. Now, under your terminology—I guess that is not a good word—under your language, of the ship, is hatch No. 4 the forward hatch in the after well? A. The forward hatch on the after deck.

Q. On the after deck, yes. And then the next hatch after that is what you call the No. 5? A. Yes, sir.

Q. Now, on this plan up here in the weather deck, there is some drawing that I don't understand. What is that (indicating)? A. That is some erection that we used on tropical waters for awnings.

Q. That was not in existence on this voyage? (369) A. No, sir.

Q. And then at this point (indicating), immediately aft of this drawing of a boat (indicating), is that the aft structure? A. Yes, that's the end of the boat deck.

Q. The end of the boat deck? A. Yes, the midship structure.

Q. Now, dealing with this deck, the after weather deck, tell us in relation to this bulkhead, which you tell us is in the after limit of the boat deck, where the stow of naphthalene was. Did it go up against this bulkhead? A. No, they were free of the bulkhead. It was aft of these bitts here (indicating)—it should be about 2 foot, 1½ foot, after these two bitts here (indicating), so it would be free.

Q. There was a space, then, between the forward stow of naphthalene and these stairs that I see delineated here on this plan? A. Yes, sir.

Q. About how much space? A. I should say about two or three feet at least.

Q. And when I just spoke of these stairs, I am pointing to the stairs appearing on the—what do you (370) call this—going from the boat deck down to the main deck, shown on this second drawing here, down from the top, on this Libelants' Exhibit 17.

Now, dealing with that stow, Captain, starting, say, two feet aft of these stairs— A. Three feet.

Q. —or three feet aft of these stairs, there was a solid stow of bags, was there not, from the bulwarks toward the hatch coaming except for a passage? A. There was from the bulwark which went about three feet from the hatch—there was a solid stow.

Q. And how high was that stow, Captain? A. I can say about six feet.

Q. And what was the distance from the bulwarks to the hatch coaming—there was some suggestion made here of 17 feet. Would that be about right? A. I think that is close.

Q. So that leaving three feet for the passageway— A. Yes.

Q. —would leave a stow of approximately 14 feet— A. Yes, sir.

Q. —from the bulwarks inboard? A. Yes.

Q. Now, how far aft did that stow of naphthalene (371) extend? A. The whole naphthalene started from here (indicating) and went right up to the front (indicating).

Q. You are now referring that it extended on the port side by No. 4 hatch and— A. Facing that.

Q. What is this here (indicating)? A. That is a masthouse.

Q. And a masthouse, and by No. 5 hatch? A. Yes, sir.

Q. How close to the poop did the stow of naphthalene extend? A. It was about the same passage in the aft part, or close to the poop as it was to the boat deck.

• • • •

(372) • • •

Q. So the stow aft at port, meaning the stow of naphthalene bags, some 13 feet in width and 6 feet high, extended from a point approximately 3 feet aft of the ladder forward to a point approximately 3 feet forward of the ladder going up to the deck over the poop? A. Yes, sir, approximately.

Q. Now, did that same condition apply on the starboard side, Captain? A. Yes, sir.

(373)

Q. Again you had a solid stow of naphthalene from a point approximately 3 feet aft of the ladder shown in this drawing— A. Yes.

Q. —to a point approximately 3 feet forward of the ladder aft extending up to the deck over the poop? A. Yes, sir.

• • • •

Q. Now, Captain, there was no covering of any kind over the naphthalene, with the exception of (374) rope slings, isn't that true? A. Right, sir.

Q. And it is true, is it not, that you had carried naphthalene on the deck of other ships on which you had been master, where you had been sailing under charter to Black Diamond, stowed in the same manner as on the "Black Gull"? A. Yes, sir.

Q. Can you tell us how many times? A. Should be about 15 or 20 times.

Q. Over a course of how many years, Captain? A. It should be over—since 1949—that is three years, two and a half or three years.

Q. And in each case that stow of naphthalene on deck uncovered was set out by the superintendent of Black Diamond and reached—or rather had your approval? A. Yes, sir.

Q. I spoke of the alleyway of approximately three feet wide; that extended on the port side the whole length of the stow of naphthalene, did it not? A. Yes, sir.

Q. Was there a like alleyway on the starboard side or just on the port side? A. On both sides, sir.

(375)

Q. On both sides? A. Yes.

Q. What was the purpose of leaving that alleyway, Captain? A. That was for the passing of the crew.

Q. The passage of the crew? A. Yes, and keep clear of the hatches.

Q. Now, let me see, Captain, how many members of the crew did you have? A. We were 40 all together.

Q. And how many of them were officers? A. Ten officers.

Q. The quarters of the officers were in the midship structure? A. Yes, sir.

Q. So you had 30 crew men who lived in the poop? A. No, sir.

Q. Well, where did they live? A. Most of the deck crew and the engine crew lived aft but we had a steward's department that lived midship?

Q. What? (Answer read)

Q. How many crewmen were there that lived aft in the poop? (Interpreter speaks to witness.) A. 22.

(376)

Q. Those 22 men, to get to their work, necessarily walked through these passages to which I have referred? A. Yes, sir.

Q. And every change of the watch you would have men of the crew walking backward and forward through those passageways, would you not? A. Yes, sir.

Q. You told us that you had carried naphthalene un-

covered on—what did you say, a dozen or fifteen prior voyages? A. No, more than fifteen.

Q. Fifteen, I guess you did say that.

The Interpreter: Fifteen to twenty, he said.

Q. Fifteen to twenty, and on all those voyages the stow of naphthalene remained uncovered during the whole of each of these voyages, did it not? A. Yes, sir.

Q. And—did you want to add something, Captain? A. Except on a few occasions we were informed from the sh' per of the consignment of naphthalene that they wanted their naphthalene covered against water——

(The interpreter speaks with witness.)

The Interpreter: "—except that on a few (377) occasions the shippers of the naphthalene wanted the naphthalene covered and they supplied tarpaulins for that purpose.

The Court: He said "covered against water."

The Interpreter: Yes.

Q. With the exception of those instances the naphthalene remained uncovered during the whole of the voyages of your ships on these prior twenty occasions?

(The interpreter speaks with the witness.)

A. Yes.

The Interpreter: "They remained uncovered."

Q. And so far as concerns the last voyage of the "Black Gull", the naphthalene was uncovered when it was stowed and it remained uncovered from the time the ship sailed from Rotterdam up to the time of the fire? A. Yes, sir.

Q. And there was no intention to cover it at any time up to the time the vessel arrived in the port of New York? A. We never arrived in New York.

Q. What? A. We never arrived in New York.

Q. I know you did not.

Mr. Longley: I guess I had better rephrase my question.

(378)

The Court: Start again.

Q. If the five had not occurred and you had proceeded into the Port of New York, you would have continued to carry the naphthalene on the deck of the "Black Gull" into the Port of New York still uncovered? A. Yes, sir. But in case of objections we had some tarpaulins on board to cover the cargo.

Q. What was that?

(Answer read)

(Interpreter speaks with witness.)

The Interpreter: "In case there would have been any objections from the port authorities at New York we had tarpaulins on board to cover the naphthalene if necessary."

Q. But if no port authority came on board and told you to cover it, you had no intention of covering it?

(The interpreter speaks with the witness.)

(Question read)

A. I will try to say it in English. Every trip coming to New York, there were surveyors coming on board for the cargo, and if they brought up these things the cargo would be covered.

Q. Well, surveyors, Captain, are not officials.

(379)

Now, let me deal with these prior twenty occasions when you brought naphthalene into American waters; on not one of those occasions did you cover it with tarpaulins, except in those instances where the shippers asked to have their shipments covered with tarpaulins because they wanted to keep it free of water.

Mr. Pyne: May I interject here, your Honor? Mr. Rein is thoroughly familiar with English and Norwegian. He tells me that it is obvious here they are talking about surveyors and port authorities, and he says he is obviously mixed up here.

Now, in this examination——

The Court: But in this case there wasn't any question of a surveyor.

Mr. Pyne: I would suggest the question be put as the interpreter put it in exact Norwegian and take the answer in Norwegian.

The Court: I think that is the best way to do it.

Will you, Mr. Interpreter, repeat the question in Norwegian and then repeat to us every word that the witness says to you?

The Interpreter: All right.

The Court: Will you read the question?

(380)

(Question read)

(The interpreter speaks with the witness.)

A. (Through the interpreter) No.

• • • •

receive an itinerary from Black Diamond? A. (In English) Yes.

(Through the interpreter) Yes.

Q. And that itinerary handed you by Black Diamond directed you to sail directly from Rotterdam to New York? A. (Through the interpreter) Yes.

Q. And then what was your next port of call—in what order?

(Witness speaks with interpreter.)

Q. The ports of destination of the cargo were Boston and Philadelphia, Captain? (381) A. (In English) Then we should call at Philadelphia and then Boston.

Q. On your westbound voyages did you always sail from Rotterdam to make New York as your first port of call? A. (In English) Yes, sir.

Q. I suppose that is because most of your cargo was consigned to New York, isn't that it? A. (In English) Yes, sir.

• • • •

Q. You have sailed into the Port of New York a number of times before this voyage, the last voyage of the "Black Gull", have you not? A. (Through the interpreter) Yes.

(382)

Q. And as you approached the Port of New York, the first thing you do is to pick up the pilot, isn't that so? A. (In English) Yes, sir.

Q. And the next thing you come to anchor and take on board the Health Authorities? A. (In English) Yes, sir.

Q. Neither the pilot nor the Health Authorities have anything to do whatever with the stowage of the cargo, have they? A. (In English) No.

Q. And then you take on the Immigration officers, do you not? A. (In English) Yes.

Q. And they have nothing to do with the stowage of cargo? A. (In English) No.

Q. And then you proceed to your port—I mean your wharf where you discharge cargo, isn't that right? A. (In English) That's right.

Q. You don't have any Government official on board your ship, do you, other than those I have mentioned? A. (In English) Other than Customs and Immigration (383) and the pilot? That should be all coming on board.

Q. What? A. (In English) That should be all coming on board.

Q. Then there never is any Governmental official that comes on your ship that has anything whatever to do with the stowage of cargo, isn't that so? A. (In English) Not at Staten Island, Quarantine Station.

Q. But thereafter, after you have left the Quarantine Station and come up to your pier and you start the discharging of cargo, there is no Governmental official that comes on board your ship, is there?

(Interpreter talks with witness.)

A. (In English) The Customs officer comes on board.

(Through the interpreter) The Customs officer comes on board.

Q. He has nothing to do with the stowage of cargo, has he? A. (Through the interpreter) No.

(Witness speaks with interpreter.)

A. (Through the interpreter) When we arrive at New York there is somebody from the Public Health Service

who comes on board and checks in regard to cargo, whether there is any dangerous cargo on board.

(384)

The Witness: (In English) No.

(The interpreter speaks to the witness.)

The Interpreter: "Not dangerous, as to what kind of cargo we have on board."

Q. That is, how it may affect the health of the Port of New York. A. (Through the interpreter) Yes.

• • • •

(386) • • •

Q. Captain, have you prepared that summary of the temperatures (handing to witness)? A. (In English) Yes, sir.

Q. Now, where were those temperatures taken, Captain? A. (In English) It was taken on the bridge.

Q. In the shade on the bridge? A. (In English) In the shade, yes.

Q. You have no record of the temperatures out in the sun? A. (In English) No, sir.

• • • •

(392) • • •

Q. And then at what hour was it that fire broke out in your cargo, Captain?

Look in your log book any time you wish. A. (In English, after examining) It was about 2300, a little after 2300.

Q. And what was the position of your ship at that time by latitude and longitude? You have it in your log book, I believe, Captain. A. (In English) No. I haven't got it. I have in there an abstract.

• • • •

(393) • • •

Q. Well, getting to the point, what was the position of the ship?

The Interpreter: The position at that time was 40 degrees 30 minutes north latitade, and 71 degrees west longitude, according to the Captain's estimate.

Q. Captain, where were you when the fire broke out? A. (In English) I must have been in my cabin.

Q. Did somebody come and advise you of it? A. (In English) The third officer advised me.

Q. By coming to your cabin? A. (In English) Yes.

(394)

Q. And then what did you do, Captain?

Mr. Pyne: May we have an answer to that question "By coming to your cabin"?

(Record read by the reporter)

Mr. Pyne: Thank you.

A. (In English) Then I ran out on deck, on the bridge, and had a look to where the fire was.

Q. What did the third mate tell you when he came to your cabin? A. (In English) The exact words I can't tell, but he said there was fire in the naphthalene bags on the port side.

Q. So you immediately went to the bridge and you went out on the flying bridge on the port side, did you? A. (In English) I went out on the lower bridge and I ran over on the sun deck, I think, and saw the smoke and the fire.

Q. Where was it burning? A. On the port side of No. 4 hatch.

Q. In relation to the bulwarks and the hatch coaming,

where was it? It was about halfway between, Captain? A. (In English) Yes, about halfway between, I (395) can say that but it looked like this (demonstrating), and then I had to run up on the bridge again.

Q. I did not understand that.

The Interpreter: "I just had a quick look and then I ran up on the bridge again."

Q. Now go on, Captain, and tell us just what you did and what you saw in relation to this fire. A. (In English) I saw dense smoke, dark——

The Witness: Can I take it in Norwegian?

Mr. Pyne: Oh, yes, questions and answers both in Norwegian.

(The witness speaks with the interpreter in Norwegian.)

A. (Through the interpreter) I saw very dark smoke and little flame, and then I immediately ran back to the bridge and asked the man at the helm to put the rudder hard to port, stand by in the engine room and slow speed, signals with the whistle, and straightened the ship as to the course when we got the wind on the starboard side.

* * * *

(397) * * *

Q. And that operation of pouring water out of the four hoses onto the after cargo where the fire was burning started within a very short time after the fire broke out, isn't that true? A. (Through the interpreter) Yes.

Q. You found it impossible to extinguish the fire, did you not? A. (Through the interpreter) Yes.

Q. Now, the fire spread from its initial point where it broke out, outboard from the No. 4 hatch? A. (Through

Q. And it spread forward, too, didn't it? A. (Through the interpreter) Yes.

Q. And then it spread over on the starboard side of the deck load of naphthalene, isn't that so? A. (Through the interpreter) Yes.

• • • •

(399)

Q. You agree, do you not, Captain, that there was no cargo in No. 4 tweendeck that could have caused this fire which you found in the naphthalene? A. Yes.

Q. And there was no electric connection in the vicinity which might be defective which could have caused this fire? A. There were no electric connections in the tweendecks.

Q. And there were no electric connections on deck in the way of No. 4, either, were there?

• • • •

A. No, not in the vicinity.

• • • •

(400) • • •

Q. Do you or do you not know whether this commodity naphthalene is susceptible to spontaneous combustion? A. No, I do not.

Q. You do not know? A. No. As far as I know, it is not liable to spontaneous combustion.

• • • •

(401) • • •

Q. Captain, isn't it true that the naphthalene melted into a liquid during the course of the fire? A. Yes.

Q. And this burning liquid flowed over the after deck of the "Black Gull", did it not? A. Yes.

Q. You arranged to have your vessel given a list to

port so that this molten flaming liquid would pour overboard; isn't that true? A. Yes.

Q. Then the fire communicated itself to the midships accommodations, that is, the bridge, didn't it? A. Yes.

(402)

Q. And then the fire was communicated to the naphthalene on the forward well deck? A. Yes.

Q. And then you and your men were forced to the forecastle head, were you not? A. Yes

Q. And the naphthalene on the forward deck melted and became a fiery stream of liquid, didn't it? A. Yes, the naphthalene commenced to burn on the forward deck. and it probably melted also.

• • • •

(404) • • •

Q. When did the Coast Guard cutter with you on board leave the scene of the disaster? A. Late during the afternoon.

Q. That was during the afternoon of the 19th? A. Yes.

Q. During that period, during all the morning of the 19th, and up to the late afternoon, the "Black Gull" continued to burn from stem to stern? A. Yes.

• • • •

Q. You had on board your vessel a messboy named Joseph Verbeeck; do you remember him? A. Yes, I remember him.

(405)

Q. He lost his life in this disaster, did he not? A. Yes.

• • • •

Q. Captain, when you took this naphthalene on board at Antwerp and Rotterdam, did you have any conversa-

tion with Captain Hollaar about it? A. Yes, there was always a conference in regard to the cargo.

Q. What did Captain Hollaar tell you about it? A. There was nothing especially said about it except that we were going to load so much naphthalene and where it was to be placed.

Q. Did Captain Hollaar give you any warning or recommendations as to the dangers which this cargo presented? A. No, but we were so used to carrying naphthalene that we knew how we were to handle it.

(406)

Q. That is, you knew you were to stow it on deck without any covers? A. Yes.

Q. Captain, it is true, is it not, that you did not think this cargo was particularly inflammable? A. No, it is not very inflammable.

Q. When this fire broke out with the result you have described here, that came as a great surprise to you, Captain? A. Yes.

Q. Did you make any study of any regulations as to the subject of naphthalene which might have been issued by any country, whether it be Belgium, Holland or the United States?

The Interpreter: May the question be read.

(Question read.)

The Interpreter: You said after this?

Mr. Longley: I did not say anything about after this, no.

Mr. Pyne: I think the question should be read.

(Question interpreted to witness by interpreter.)

A. I can't remember exactly what I have read about naphthalene, but I have read something about it, but I

don't remember exactly now. I have read more about it later.

Q. In any event, as of the time you sailed on (407) this voyage, Captain, you had no knowledge of any particular precautions which should be taken to guard this cargo against fire? A. I have read the Coast Guard regulations and the Norwegian Sea Control rules, and other books in regard to it.

Q. What knowledge did you secure from your reading, Captain, as to the dangers which this cargo presented? A. That it is considered as a hazardous cargo in the United States.

Q. That is all you knew about it, Captain?

Mr. Pyne: The whole answer has not yet been completed.

Mr. Longley: Let us get it completed.

Mr. Pyne: Maybe we better have it read.

(Last record, with last two questions, read by reporter.)

Mr. Pyne: The witness was continuing.

A. (Continued) And that it should have a particular treatment.

Q. Have you got an additional answer you want to give, Captain?

The Interpreter: He asks if he can't wait (407a) a little.

Mr. Longley: Oh, yes. I did not mean to rush you, Captain.

The Court: We will take a short recess.

(Short recess.)

(408)

By Mr. Longley:

Q. When we adjourned, Captain, you wanted a ittle more time to think over an additional answer to the last question.

Will you give us any additional answer you wish to make?

Mr. Longley: Do you want to read the question, Mr. Reporter?

(Record read by the reporter.)

Q. Go ahead, Captain. Have you understood what the reporter has read, Captain? A. (In English) Yes.

Mr. Pyne: May we have the last question read without the interpolation—the question that is incompleted—if you will just let the reporter read it.

(Question read by the reporter.)

Mr. Pyne: Read the question which the witness was partially answering, what knowledge did he secure.

(Record read.)

The Court: Repeat the last question.

The Reporter: (Reading)

Q. What knowledge did you secure from your reading, Captain, as to the dangers which this cargo presented?"

The Court: Now will you interpret that?

(409)

(The witness speaks to the interpret .)

A. (Through the interpreter) I read already in 1949 when we commenced to carry naphthalene cargoes and

later we have carried naphthalene in the same way as we did on the first voyages, and that the American Coast Guard regulations say that the cargo should be protected.

Q. Is that all you want to say, Captain? A. (In English) Yes, sir.

Q. Only one other question I have to ask you, Captain. Showing you Libelants' Exhibit 17, which is the outline plan of the ship, that is, of the "Black Gull", you have told us that in this upper drawing, this structure here (indicating) was not on the "Black Gull"—and when I say "this structure here," if I may, I am going to line out with the letter "S"—will that be all right—(after marking) that structure which I have marked "S" was not on the "Black Gull" because that was merely used when the vessel was operating in the tropics, is that correct? A. (Through the interpreter) Yes.

Q. Now, you have told us that the stow of naphthalene came within about—how many feet was it? (410) A. (Through the interpreter) Three feet.

Q. Three feet from the base of this ladder right here (indicating). A. (Through the interpreter) Yes.

Q. Now, this line here (indicating), which I will mark with the letter "L"—(marking)—denotes the after end of the boat deck, does it not? A. (In English) Yes.

(Through the interpreter) Yes.

Q. Now, the passengers were expected to promenade when they wished to, on this boat deck, terminating at the aft line I have marked "L." A. (Through the interpreter) No, the passengers promenaded here (indicating).

(In English) On the lower bridge.

Q. Well, isn't this the boat deck (indicating)? A. (In English) Yes, sir.

Q. Didn't the passengers walk on the boat deck, too? A. (In English) Very seldom.

Q. But they were permitted to, Captain? A. (In English) Yes, yes.

Q. Then how high from the weather deck was that bridge deck? It looks as though it might be eight or nine feet; is that right?

(411)

The Interpreter: You mean the boat deck?

Mr. Longley: The boat deck down to the weather deck.

A. (Through the interpreter) Well, it was about seven to eight feet but there was also a bulwark around there.

Q. Yes, but anyone standing on the boat deck looking over the bulwark would look down on top of the stow of naphthalene, isn't that true? A. (Through the interpreter) Yes.

Q. And as the stow of naphthalene was approximately 6 feet high, the top of the stow would be about a foot or two below the level of the boat deck where a passenger might be standing, is that correct? A. (Through the interpreter) Yes.

Q. What speed did your vessel make, Captain, when it was going full speed? A. (Through the interpreter) 16½ miles.

Q. Then necessarily, Captain, anything which might be thrown from the boat deck or out a port hole of the passengers would flow aft, isn't that true? A. (Through the interpreter) It all depends on the wind, of course.

Q. Well, if you had no wind and the speed of your (412) ship would, in effect, make a wind of 16 knots, wouldn't it? A. (Through the interpreter) Yes.

• • • •

Fritjov Andersen—for Libelants—By the Court

By the Court:

Q. Captain Andersen, I am not sure that I understood your answers about what you knew about naphthalene.

The Court: (To the interpreter) Will you translate that, please?

(Interpreter speaks to witness.)

Q. (Continuing) Did you mean to say that before the last voyage of the "Black Gull" you had read in American Coast Guard regulations that naphthalene when carried on deck was to be covered? A. (Through the interpreter) No.

Q. When did you first get that information about the Coast Guard regulations? A. (Through the interpreter) In 1949 when we (413) first started to carry naphthalene, that was the first time that I learned about the Coast Guard rules.

Q. So that at the time of the last voyage of the "Black Gull", you knew that the Coast Guard regulations required that naphthalene, when carried on deck, be covered?

(Witness speaks with interpreter.)

The Interpreter: He says "I mean it should be protected, not covered."

Q. What does "protected" mean to you? A. (Through the interpreter) I mean by "protected" that there should be built a sort of a sun deck over naphthalene in such a way that it can be ventilated underneath that sun deck.

Q. There was no such sun deck provided on the "Black Gull," was there? A. (Through the interpreter) Because it is impossible to use it in the North Atlantic.

Q. So you think that it is impossible to comply with the

Coast Guard regulations in the North Atlantic? A. (Through the interpreter) In these specific instances, I mean that it is impossible to follow same in the North Atlantic.

Mr. Longley: I must confess that I couldn't (414) follow that last answer.

(Answer read by reporter.)

Q. Captain Andersen, I think you understand the questions that I have been asking you, and would you like to give any further explanation? A. (Through the interpreter) I think I stated what I meant.

The Court: All right.

* * * *

Chester A. Snell, called as a witness on behalf of libelants, having been first duly sworn, testified as follows:

Direct examination by Mr. Longley:

(415)

Q. Doctor, where do you live? A. 188 West Hudson Avenue, Englewood, New Jersey.

Q. And will you tell us in your own words your profession and your qualifications in that profession, giving your education and your general experience? A. I have attended New York University, Columbia University, Polytechnic Institute of Brooklyn.

I hold the degrees of Bachelor of Science in Chemistry, Master of Science in Chemistry and Doctor of Philosophy.

I taught chemistry for seven years at the Polytechnic Institute; worked as a research chemical engineer for the

Aluminum Company during the war; for the past ten years I have been employed by Foster D. Snell, Inc., consulting chemists and engineers where I am now an account executive in charge of the analytical department in the engineering department.

Q. Doctor, are you familiar with the characteristics of crude naphthalene? A. I am.

Q. Tell us in your own way what its chief characteristics are. A. Crude naphthalene is, as the name implies, only partially refined. It is obtained from coal tar, (416) so-called, middle oil of coal tar which is either expressed or centrifuged to remove a large amount of the liquid fraction, leaving a solid light or dark brown in color—depending on how crude it is—and containing from 8 to 20 per cent of oil.

The material, when pressed, will give off this oil. As a matter of fact, the method of determining how much actual naphthalene there is—wrap it up in a filler of paper, put it in a vise, squeeze the oil out and find out how much naphthalene is left.

The material is odoriferous, as practically everybody knows, because moth balls are made out of naphthalene and it has a melting point somewhat less than pure naphthalene—in fact, it is generally sold under a specification of melting point.

Pure naphthalene melts at 79 degrees Centigrade—that is about 174 plus Fahrenheit.

Crude naphthalene will be sold as 77 degrees, 76 degrees, depending on what the melting point is.

The flash point is also somewhat lower than that of pure naphthalene. Pure naphthalene, has a flash point, depending on the method used, whether it is open or closed cup, varying from 174 degrees Fahrenheit to 190 degrees Fahrenheit—in other (417) words, it flashes at just about its melting point.

By "flash point," I mean the temperature at which in

the presence of a flame there will be a flash of fire but not a continuous fire.

The fire point is a few degrees higher.

Q. Is the flash point of crude naphthalene—did I hear you say something less than that of pure naphthalene? A. It is slightly less, yes. The oils are more volatile than naphthalene itself, and reduces the flash point some. It depends on how crude it is, of course.

Q. What are the characteristics of crude naphthalene as to inflammability? A. It is very inflammable, particularly so in the presence of material that will act as a wick or burn. If you have naphthalene without any other material, it is a little difficult to ignite but if you have bagging or something like that, that will act as a wick, it is quite readily ignitible.

Q. There is evidence here, doctor, that some 2,715 bags of crude naphthalene weighing 254 tons were stowed on the after deck of a ship known as the "Black Gull"—the bags being burlap bags, and that (418) this naphthalene was stowed in a solid mass about six feet in height and extending fore and aft a distance of—I don't know how many feet—and that this stow of naphthalene packed in the burlap bags to which I have referred remained in open stowage on this vessel's deck during the course of her transAtlantic voyage in the month of July.

What would you expect under those circumstances, doctor, would be the condition of the burlap covers of this naphthalene as to inflammability? A. Well, it would depend to some extent on where they were in the stow. Of course, the ones in the lower tiers would have the weight of the bags above them pressing down and would squeeze more of the oil out in the bagging than the upper bags.

On the other hand, the upper bags would be exposed to the sun's rays and naphthalene sublimes, so that it

would be quite likely that part of the naphthalene would sublime into the bagging on the upper tier.

Q. I do not know whether the Judge knows or not, but I do not happen to know what the term "sublime" means, doctor. A. Sublime—sublimation is going from a solid (419) to a gas without melting.

Naphthalene doesn't go—doesn't necessarily melt before it becomes gaseous. As an illustration, there is the mothball again. You have to have gaseous naphthalene in the air before you can smell it and you know that the mothball doesn't melt, although you smell the naphthalene.

Q. You get the smell of mothballs, that is, naphthalene, at a very low temperature, will you not? A. Yes. Well, two things: It has a relatively high vapor pressure even at low temperatures and you don't need very much in the air to smell.

Q. Well, is it or is it not true that as the temperature of this commodity goes up, the escape of gases from it increases? A. Yes. The higher the temperature the greater the vapor pressure.

Q. You spoke of such a thing as bagging operating as a wick.

Now, I have told you what the conditions were on this ship. Will you explain under those circumstances just what you mean by the condition or the danger of a wick? A. Well, once the fire started, the naphthalene (420) exposed to the heat would melt and be absorbed by the jute, the bagging—it should act like a candle. You can take a candle and it won't burn unless you have a wick. Once you start the wick to burning, then the wax volatilizes and burns.

Naphthalene acts much the same way, although it will burn without a wick but not as readily.

Q. Dealing with this commodity, crude naphthalene, is it or is it not susceptible to spontaneous combustion? A. No, there is no spontaneous heating whatever.

Q. Naphthalene, that is, crude naphthalene stowed in burlap bags in the manner that I have described, would that be—I will better say would the danger of fire be presented if such a thing as a burning cigarette butt or a burning cigar butt should reach the stow? A. Oh, yes.

(421)

Q. How would that danger present itself? A. Well, from recent studies made by the fire marshal's office of California, it indicates that the cigarette when not being puffed on has a minimum temperature of 500° F.

Q. You say F., and you mean Fahrenheit? A. Fahrenheit. The melting point of naphthalene is well below 500° F., so that naphthalene in contact with a burning cigarette butt would melt and most likely catch fire.

Q. If a fire starts in a stow of naphthalene of the dimensions I have described to you, what can be expected as to the intensity of the fire and its spread? A. Well, given sufficient air it would spread very rapidly and it would be quite an intense fire.

• • • •

Q. These characteristics to which you have testified here, Doctor, is there any secret about it, or (422) are these characteristics widely known and published in various scientific works? A. Oh, they are included in any handbook of chemistry or organic chemistry books.

• • • •

(425) • • •

Deposition of PEDRICK D. HERLOFSEN

Mr. Pyne: The first one is Peter Didrick Herlofsen.

• • • •

(454) • • •

Cross examination by Mr. Ziegen:

"Q. Did Sigurd Herlofsen & Co. have any agents at the ports of Hamburg, Bremen, Antwerp or Rotterdam in June and July 1952? A. No agents that was connected with the Black Diamond Line service.

"Q. Did it have any agents at all? A. Naturally, when you come in with a tanker you have to appoint agents.

"Q. Did you not also have to appoint agents when general cargo ships of Sigurd Herlofsen & Co. were to enter a port? A. That should apply to the same thing. Any ship would have to appoint their own agents.

"Q. What was the situation with respect to ships chartered to Black Diamond Line? A. There the agency representation was completely in the hands of the Black Diamond Line.

• • • •

(474) • • •

"Q. Mr. Herlofsen, as I get the picture, Skibs A/S Jolund as a corporation did not itself have anything to do with the operation of the 'Black Gull'. A. No, that was left to Sigurd Herlofsen & Co.

"Q. Sigurd Herlofsen & Co. were in fact the operators? A. Correct.

"Q. Sigurd Herlofsen & Co. in turn had no agents which it directly appointed in the vessel's ports of call? A. Not for the Black Diamond ships.

Deposition of Pedrick D. Herlofsen—Cross

"Q. And that included the 'Black Gull'? A. Correct.

(475)

"Q. And it relied on Black Diamond Steamship Corporation or Black Diamond's agents to perform whatever had to be performed in the various ports of call on the ship's behalf? A. That is correct.

"Q. It relied on the Black Diamond Steamship Corporation or Black Diamond's agents and the master to see that only such cargo was carried as was permitted by the charter? A. Obviously, for the simple reason if we should have anything to say with regard to the stowage of cargo we cannot very well say it here, and accept and refuse cargoes that is booked up daily, almost the last hour before sailing.

"Q. In effect, the authority of the owner of the 'Black Gull' with respect to what cargo was to be carried, and how it was to be carried or stowed, was vested in the master and in Black Diamond? A. I would say vice versa—Black Diamond and the master.

"Q. And why do you prefer to put it in that order? A. Because I think it is the Black Diamond Line or their agents who supply the stowage plan to the Captain.

"Q. And in your opinion, it is Black Diamond Steam-
(476) ship Corporation which has the primary right to determine what cargo shall be accepted and what cargo shall be refused, and how the cargo accepted is stowed? A. They can determine that, always subject to the master's approval."

• • • •

(481) • • •

Deposition of CAPT. INGE SVENDSEN

Mr. Pyne: I have now the next deposition I would like to read, which is that of Captain Inge Svendsen. • • •

• • • •

(482) • • •

Direct examination by Mr. Pyne:

"Q. Where do you reside, Captain Svendsen? A. At Gamle Jkelsasveien 3, Grefsen, Oslo.

"Q. Do you hold any license from any Government Authority for Marine or vessel service? A. Yes. I hold a Master's license—a Norwegian Master's license.

"Q. And for how long have you held a Norwegian Master's license? A. For ten years, since 1945.

"Q. And does that license cover all oceans and waters? A. Yes.

• • • •

(483) • • •

"Q. If I understand you correctly, your last sea service was some time in the year 1953? A. Yes, that is correct.

"Q. And from that time down to now, what has been your occupation and service, and in whose employ? A. I have been employed at Sigurd Herlofsen & Co. in their Marine Department.

"Q. And has that been employment ashore? A. Yes, in the office here.

"Q. And here in their office at Oslo? A. Yes.

(484)

"Q. Prior to that service ashore, and in the office here in Oslo, did you serve on any vessels operated or managed

by Sigurd Herlofsen & Co.? A. Yes, I served on three vessels managed by Sigurd Herlofsen.

• • • •

(485) • • •

"Q. Your present duty or duties here in the employ of Sigurd Herlofsen & Co. A/S are what? Will you describe them for us? A. Well, at present, I am head of the Marine Department, and I have under me the Crew Department, engaging crew, and I am also naturally doing some work in connection with the survey of the vessels or maintenance of the vessels at the present time.

"Q. And when, as nearly by date, month and year as you can state it from your recollection, did you become head of the Marine Department of Sigurd Herlofsen & Co. A/S? A. January 1st, 1954.

"Q. Do you know who preceded you as head of that Department? A. Yes. Captain Wellton.

"Q. Do you know where Captain Wellton now is? A. Yes, he is here in Oslo."

• • • •

(487) • • •

"Q. Now, in the daily work here at Sigurd Herlofsen, will you tell us whether or not the organization is divided into departments, and, if so, what departments? A. Yes, in the daily work we divide in the Maritime and Technical Department, and we also have an Accounting Department. These three are the main division of the firm.

"Q. With respect to repairs or maintenance of vessels operated or managed by Sigurd Herlofsen & Co. A/S, do you have any duties, and have you had any duties or work to do, you personally? A. The repairs are divided. If it is strictly a technical matter it will be handled by our Technical (488) Department, but maritime matters, handling things that have to do with deck, then I have

had something to do with repairs and maintenance, and also survey or inspection or whatever you want to call it.

. . . . .

(489) . . .

"Q. In June and July 1952, were you then employed by Sigurd Herlofsen & Co. A/S? A. Yes.

"Q. And may I ask where at that time you were employed? A. I was in the Marine Department in the office in Oslo.

"Q. And for how long a period of time prior to June and July 1952 had you been in the Marine Department (490) at Oslo? A. I had been in the Marine Department at that time during 1951 and the first part of 1952, but I did work partly in the Marine Department for Captain Wellton also prior to that time, but I just had the work given to me by Captain Wellton. For instance, I might be sent out on a ship as a Captain, or anything that he thought he needed me for.

"Q. You just assisted Captain Wellton, in other words? A. Yes.

"Q. And having told us that you had last gone to sea in 1953, then you must have gone to sea some time after June/July 1952? A. Yes, I did. I went out as a relief Master in a tanker in 1953.

"Q. And that was your last actual sea service? A. Yes.

"Q. And then, when Captain Wellton retired, you took his position or place? A. Yes."

. . . . .

(506) . . .

Cross examination by Mr. Zisgen:

"Q. When did you first commence office work under Captain Wellton? A. The first time I had anything to do in the office was for a very short period in 1947.

"Q. When next did you have anything to do with the office side of the work? A. I were in the office part of 1948, also part of 1949, two months of 1950, most of 1951, and then up until 1952. I was the whole year in the office in 1952 and part of 1953.

"Q. Now, when you first came to the office in 1947, what was the nature of your work? A. I only assisted Captain Wellton in making up some average claims.

"Q. General average claims? A. No, particular average claims, statements of (507) claims.

"Q. That is, particular average to the vessels? A. Yes.

"Q. Then when you next came to the office to do office work, which was in 1948, what work did you do? A. Only such work Captain Wellton asked me to do. Actually nothing particular, only what he needed me to assist him on.

"Q. Well, would it be fair to say that during that period in 1948 you assisted him generally in the various duties which he performed as your predecessor? A. Yes, I assisted him in certain of his duties. Yes.

"Q. Now, coming to the next occasion, which was in 1949, what did you do? A. It was the same as in 1948.

"Q. And in 1950? A. The same thing.

"Q. And in 1951? A. The same thing.

"Q. And in 1952? A. Same thing."

• • • •

(508) • • •

Deposition of ALBERT ZIMMERMANN

Mr. Pyne: I should like to read, your Honor, from the deposition of Albert Zimmermann • • •

• • • •

(517) • • •

Cross examination by Mr. Zisgen:

"Q. Mr. Zimmermann, in surveying and classifying vessels Norwegian Veritas does not purport to deal with the stowage of cargo, does it? A. No."

Deposition of DR. SJUR BRAEKHUS

Mr. Pyne: The next witness, your Honor, was Professor Sjur Braekhus, • • •

• • • •

(531) • • •

Cross examination by Mr. Stonebridge:

"Q. • • • With respect to questions and/or answers concerning the Compensation Act of Norway, does it or does it not apply only to Norwegian citizens? A. It applies only to Norwegian citizens. There is Section 2, subsection 1: 'Aliens shall not be liable to insurance, nevertheless the Crown may conclude reciprocal agreements with other countries respecting compensation to seamen and their dependents.'

"Q. As between Norway and Belgium, has the Crown concluded any such agreement? A. No, it has not."

• • • •

(532) • • •

Cross examination by Mr. Zisgen:

"Q. Dr. Braekhus, I understand then that no compensation under the Acts you have mentioned is payable to the surviving relatives of a Belgian seaman whose death occurs on a Norwegian ship? A. That is correct, with one exception. In subsection 2 of the Act, there is special rules covering hospital treatment and funeral expenses.

"Q. With that exception my statement was correct? And am I correct, therefore, in assuming that the dependent relatives of a deceased Belgian seaman on a Norwegian vessel are not prohibited from suing, either in Norway or abroad? A. They are not prohibited from suing in Norway, and I should think you are correct that they are not prohibited from suing abroad.

"Q. That last would depend somewhat on the law of the forum, would it not? A. Of course."

• • • •

---

(537) • • •

Deposition of Joseph Collard

The first one is a deposition of a lawyer named Joseph Collard, • • •

Direct examination by Mr. Pyne:

(537)

Q. What is your occupation? A. I am a lawyer in Antwerp as from 1929.

• • • •

Deposition of Joseph Collard—Cross

Cross examination by Mr. Zisgen:

(554) • • •

"Q. In instances in which the question to be decided depends upon technical knowledge in fields other than that of navigation of ships to what sources do the Belgian courts turn for assistance? A. When cases do not concern navigation or stowage, the courts have recourse to other experienced specialized men in one or the other field.

"Q. In the field of chemistry for instance to whom do they turn? A. For these cases the court would generally appoint a chemist or a professor of merchantable goods.

"Q. Do you know the names of any chemists that the courts of Antwerp have consulted in such instances? A. From memory I know that the court has already appointed Mr. Desmurs and Mr. Angelot.

"Q. Have you ever known them to appoint or consult Dr. Jules Aeby? A. Mr. Aeby is very well known as author of the book, 'Dangerous Goods'. Personally I have never had him in cases which I have treated as being appointed by the Tribunal.

"Q. Have you known of any instances where the Tribunal of Antwerp has appointed him? (555) A. I do not know of any cases in which Mr. Aeby would have been appointed but I know that before the Court often use has been made of his book in the course of cases.

"Q. By that you mean use has been made of his book by the attorneys? A. Yes.

"Q. When you say his book, you mean, do you not, this book"——

That was then identified, your Honor, as the third edition, the 1938 edition, which has already been offered in evidence here.

• • • •

(568) • • •

Deposition of FRANCOIS VERWORST

Mr. Pyne: I would like next, your Honor, to read from the deposition of Francois Verworst:

Direct examination by Mr. Pyne:

"Q. What is your full name? A. Verworst.

"Q. First name? A. Francois.

"Q. Captain Verworst, you reside here in Antwerp? A. Yes.

"Q. What is your occupation? A. Nautical expert with the Tribunal of Commerce in Antwerp.

"Q. For how many years have you been a nautical (569) expert with that Tribunal? A. Since October 1947.

"Q. Prior to 1947 what was your occupation and how long? A. I have been for about twenty years in the service of the Compagnie Maritime Belge as second mate, first mate and captain.

"Q. Will you tell us briefly what the duties are of the nautical experts, what work do they do in the course of their ordinary day or week? A. We go daily aboard ships in order to verify the stowage of merchandise as well in loading as in discharging."

• • • •

(589) • • •

Cross examination by Mr. Zisgen:

"Q. What do you know of the characteristics of naphthalene? A. When we are not sure about any cargo, we (590) consult our books we have.

"Q. What books are they? A. American books, English books, French books.

"Q. Can you name them for me or some of them? A.

We have the book 'Dangerous Cargo' from the Minister of War transport. We have the same book in French given by the French Government. We have a standard American book given out by the Department of Commerce.

"Q. Is that 'Modern Ship Stowage'? A. Yes 'Modern Ship Stowage.' Then we have Thomas's book on stowage. We have a French book but I forgot the name of the writer, I am not sure.

"Q. Have you Dr. Jules Aeby's book? A. Yes.

"Q. Do you refer to that? A. We refer to that and we have the latest edition, too.

Mr. Pyne: May I continue with the next two or three sentences, your Honor?

The Court: Yes.

Mr. Pyne: Immediately after.

"Q. Have you Dr. Jules Aeby's book? A. Yes.

(591)

"Q. Do you refer to that? A. We refer to that and we have the latest edition, too.

"Q. I'll show you a book, which has been marked 'Libelants' Exhibit'—9—'for identification'——"

(To Mr. Zisgen) Is that the 1938 edition?

Mr. Zisgen: That is right.

Mr. Pyne: Do you know its present number?

Mr. Zisgen: 9.

Mr. Pyne: I will change that then to give it its present number—"which has been marked Libelants' Exhibit 9 for identification. Is that Dr. Aeby's book to which you refer?

A. Yes, but it is not the latest one."

All right.

Mr. Zisgen: On page 18:

"Q. Do you know that the vapor of naphthalene is explosive? A. Yes.

"Q. Where did you find that out? A. I have learned it and read in books.

"Q. Which books? A. Chemical books.

"Q. You knew that at the time the 'Black Gull' was (592) loaded? A. Yes.

"Q. Did you know that there was danger of fire occurring to naphthalene in 1952? A. Yes.

"Q. Was that a matter of general knowledge at Antwerp at that time? A. Yes, sir, I suppose everybody knows. I have read it in books.

Page 19:

"Q. The naphthalene stowed on the after deck on the 'Black Gull' at Antwerp was not covered and protected from the rays of the sun? A. No, sir.

Then at page 20:

"Q. Actually, Captain, you did not take into consideration at the time you were on the ship the possibility or the likelihood that there might be passengers on the ship and that they might smoke, did you? A. As I told you, sir, we are not interested in the crew or in the passengers.

"Q. You gave no thought to the crew or the passengers? A. It is not my mission. My mission consists only in verifying if all the necessary precautions have been taken."

• • • •

(598) • • •

Deposition of Dr. Jules Aeby

I would like now to read the portions of the testimony of Dr. Aeby which was not read by Mr. Zisgen in the claimants' case.

From Dr. Aeby's deposition, at the bottom of page 10:

Cross examination by Mr. Pyne:

"Q. Doctor, I am going to ask you to assume that an ordinary cargo vessel which is fitted with a midshiphouse, has forward of the midshiphouse three hatches and aft of the midshiphouse two hatches and that that vessel has a cargo of crude naphthalene which is in burlap or jute bags carried on her deck both forward of the midshiphouse and also aft of the midshiphouse and that those bags of naphthalene are fastened and secured in place with rope nets but not otherwise covered and that they are placed in tiers or layers five or six bags or thereabouts in height. I am going to ask you to assume that that vessel with that cargo of naphthalene on the (599) open deck sailed from Rotterdam July 11th, 1952, bound for New York and of course on a course through the North Atlantic and I am going to ask you to assume that the log book, the deck log book of that vessel shows the temperatures recorded at the end of each four hours watch and that all of these temperatures are in Centigrades and that on the first day, July 11th, the temperatures ranged from the highest of 18°C at noon time to the lowest of 16°C at 8 o'clock in the morning and 16°C at midnight. That on the following day July 12th the highest temperature was at 4 o'clock p.m. 18°C, the lowest 16°C at 4 a.m., that at 8 p.m. it was 18°C and the other watches 17°. That on

July 13th the highest temperature was at noon 22°C, the lowest 17° at midnight and the other watches were 18° four in the morning, 21° 8 o'clock in the morning 20°C 4 o'clock in the afternoon 19° at 8 p.m.

"That on July 14th the highest was 22° at noon, the lowest 16° at 8 a.m. and that at the other watches was 4 a.m. 17°, 4 p.m. 21°, 8 p.m. 19°, midnight 18°.

"July 15th, highest at 4 in the afternoon, 4 p.m., 23°, the lowest 19° at 4 a.m. and midnight, 20° at 8 a.m. and 8 p.m. and 22° at noon.

(600)

"July 16th: the highest was 20° at 4 am
19° at 8 am
18° at noon
19° at 4 pm
17° at 8 pm and midnight.

"July 17th, the highest temperature was at noon 23°.

"on the other watches 17° at 4 am
16° at 8 am
22° at 4 pm
21° at 8 pm
22° midnight.

"That on July 18th on which day a fire occurred on that vessel, the highest temperature was 25° at noon, the lowest at 4 am 19°, 8 am 20°. At noon the highest temperature was 25° and at 4 pm 23°, at 8 pm 22°, and I am going to ask you to assume that at or shortly after 11 o'clock at night, 11 p.m., 23 o'clock, a fire was discovered in the naphthalene abreast that portion of it that was abreast of No. 4 hatch, which is one of the two hatches aft of the midshiphouse. I am going to ask you to tell us whether or not in your opinion (601) the sun's rays could have been either a cause or a contributing cause to that fire."

Then there were some objections——

Mr. Zisgen: Well, if your Honor please, the situation since those objections were made have changed in that many of the missing elements have now been supplied in the evidence.

These temperatures are taken from the log book——

Mr. Pyne: Yes.

Mr. Zisgen: —which are set out in that exhibit that has already been offered, and we withdraw the objection to the question.

Mr. Pyne: And the balance of the hypothetical I won't take the trouble to read then, because we presented the witness also with a copy of the plan of the ship itself, which had then been marked for identification and has now been marked in evidence here as an exhibit.

And with those additional facts given to him, the question is repeated:

"I am going to ask you now based on those facts, whether or not in your opinion the rays of the sun which had occurred on that voyage have or could have been a cause or a contributing cause of the fire (602) which broke out in the naphthalene on deck on the port side of the vessel alongside of No. 4 hatch. A. My answer is no.

"Q. Would you be kind enough, Doctor, to explain or define for me what is meant by flash point of a commodity? A. The flash point of a commodity is the temperature at which the commodity takes fire when approached by an open or naked flame."

Now, Mr. Stonebridge asked a few questions.

Mr. Zisgen: Before he does, those temperatures are all in centigrade, are they not?

Mr. Pyne: That is right—the question to the witness so stated.

Mr. Zisgen: Well, not all of them do. And they were the temperatures, your Honor, on the bridge, as one of the witnesses brought out.

Mr. Pyne: That is correct, taken from the log book.

* * * *

---

(608)

NILS VALEN, sworn through the interpreter, testified as follows:

Direct examination by Mr. Pyne:

Q. Mr. Valen, by whom are you now employed? A. Sigurd Herlofsen & Company.

Q. Are you presently a member of the crew of any vessel, and if so, what vessel? A. On board the "Black Hawk."

Q. Is the "Black Hawk" in the Black Diamond Steamship Corporation service? A. Yes.

Q. Are you a licensed mariner? A. Yes.

Q. And what license do you hold? A. Mate's certificate.

Q. Is that a Norwegian license? A. Yes.

Q. How long have you held that mate's certificate? A. Since June '47.

Q. All told, total number of years, how long have you been going to sea? A. Since March 1937.

Q. Were you formerly a member of the crew of the "Black Gull"? A. Yes.

(609)

Q. When did you first join the "Black Gull"? A. April 4, 1951.

Q. And did you remain on board in service of the "Black Gull" down to the time of the July 1952 fire? A. Yes.

Q. In what capacity? What was your job on the "Black Gull"? A. Third officer.

• • • •

(615) • • •

Q. When the "Black Gull" loaded at Antwerp and Rotterdam early in July 1952, for a voyage to the United States, were you present during that loading or a part of it? A. Yes, partly.

Q. When you say "partly," will you explain what you mean by that? A. We were running watches.

Q. When you were running watches, do you mean by that that you were on deck during your watch? A. Yes.

Q. When the "Black Gull" sailed from Rotterdam on (616) that voyage—and if need be, you can look at the log book, but I take the date July 10, 1952—did you see the deck cargo on the "Black Gull"? A. Yes.

Q. As third mate on the "Black Gull", while the vessel was underway navigating, did you stand a regular watch? A. Yes.

Q. What was the watch, where were you and what did you do—just generally? A. I was on the watch from 8 to 12 in the morning and 8 to 12 at night. I was all the time on the bridge and had to do with the navigation of the ship, lookout, etc.

Q. Excepting for your times on duty on the bridge in the 8 to 12 morning and night watches, were you on the bridge as watch officer at any other time ordinarily and

usually? A. I was on the bridge at night relieving the chief officer in order that he could go and get his supper.

• • • •

(617) • • •

Q. In the loading and stowing of the cargo on the "Black Gull" for this voyage, who performed the actual work of the loading and stowing? A. A stevedoring firm.

Q. During the loading and stowing at any time did you, as deck officer or otherwise, ever give any orders, instructions or directions with respect to the loading and stowing? A. No.

Q. Now when the vessel, the "Black Gull", sailed from Rotterdam at the time and on this voyage that you mentioned, did you personally see the deck cargo? (618) A. Yes.

Q. Briefly, what was the deck cargo? A. It was bags of naphthalene on the forward and after deck; there was also 33 drums of chemicals on the after deck; then there was a sailing yacht on No. 2 hatch.

Q. Will you tell us how this naphthalene was stowed on deck? A. It was stowed there fore to aft, a space three feet away from the hatch coaming and on the sides there was something like a fence of dunnage, spaced about one foot off the bulwark, and there were stores six bags high. The lowermost tier was stoward athwartship with a small space between every third bag.

Q. Were the bags secured or made fast in any way? A. We had nets of manilla rope on the top and sides—on top and on the sides.

Q. You have stated that the lowermost, the bottom tier of bags, had spaces between the bags, is that right? A. Yes, it was a small space between each third bag.

Q. For what purpose? A. In order that water could get out.

Q. How about the other tiers up above the first or

lowermost tier? A. They were stowed fore and aft. (619) tightly together.

Q. Except for the burlap or jute bags themselves and manilla nets which you have mentioned, was the stow of naphthalene covered in any other way? A. No.

• • • •

(624) • • •

Q. Was there any sign or signs or that or any (625) other kind on the boat deck anywhere? A. No.

Q. And how about the lower bridge: Were there any such signs on the lower bridge? A. No.

• • • •

(627) • • •

Q. Did you yourself personally while on deck or while on duty on the "Black Gull" ever smoke? A. I never smoked on deck.

Q. Did you smoke anywhere while you were on duty? A. Smoked in the chart room and the wheel room or wheelhouse.

Q. On the night of the fire what time did you go (628) on watch or on duty? A. About half-past eight.

Q. And where did you go then? A. I was on the bridge.

Q. Previously that evening had you also been on deck duty, the navigation bridge or pilothouse? A. Yes, I had previously relieved the chief officer from about 6 o'clock until 7.30.

Q. During the time that you were relieving the chief officer at the time you have mentioned, did the chief officer or the captain or both of them come to the navigation bridge? A. Yes, the chief officer came to relieve me again, and the master also came up.

Q. When did the master come up and for what purpose? A. The captain came up at about the time we passed Nantucket Lightship.

Q. What time, and if need be refresh your memory from the log book, did you pass Nantucket Lightship? A. That was at 1924.

(629)

Q. Did you take an observation of Nantucket Lightship? A. Yes.

Q. What was it? A. It bore 360 degrees true, 8 miles off by radar.

• • • •

(632) • • •

Q. Now, on the "Black Gull", was there any regular routine with respect to the wheelsman and the lookout changing places? A. There were two men on watch on the "Black Gull", and they relieved each other in such a way that they had one hour at the wheel and one hour at the lookout.

Q. Now, while you were on watch on the night of July 18, 1952, as deck officer, did anything unusual occur, and, if so, when and what? A. Yes. The time was about ten past eleven when I went out on the starboard wing, when I heard a sound which I thought was coming from aft.

Q. How do you fix that time of ten past eleven? A. Yes, I know, because the ordinary seaman had been at the wheel from ten to eleven and he went down soon thereupon—soon before.

Q. Can you describe as best you can the sound that you mentioned? A. I can say it was a hollow dump sound.

Q. I did not get the word after "hollow."

(Record read)

(633)

Q. Now, did you do anything and what did you do? A. I turned around and then I saw some smoke and a

small flame coming from the after deck portside just abaft—abreast of No. 4 hatch.

Q. Did you take any action or do anything then? A. I ran down on the port side to the sun deck which is above the boat deck.

Q. I will show you Petitioners' Exhibit R and ask you whether you can indicate what deck you are talking about (handing to witness). A. I talk about that sun deck there (indicating).

Mr. Pyne: Can we mark it in any way or describe it, your Honor?

The Court: You can have him mark it "SD."

Q. On what level is that deck—level with what? A. It is at the same height as the deck on the lower bridge.

Mr. Pyne: In accordance with your Honor's suggestion, might I put "SE" on that deck that he pointed out?

Mr. Longley: This is on Exhibit R?

Mr. Pyne: That is on Exhibit R, yes.

The Court: What does "E" stand for?

Mr. Pyne: I understood your Honor to say (634) to have it marked "SE."

The Court: "SD."

Mr. Pyne: Oh, "SD."

(Mr. Pyne marks)

Q. Now, what did you do when you got to that sun deck? A. I ran back in order to call the master and I met him in the alleyway to his room.

Q. And what did you do on that deck? A. I ran back to the bridge and gave a signal which passed to all passenger rooms and alleyways—which passes to all passengers and crew alleyways. Then I ordered the man at the wheel

to give port helm. Then I rang the engineer on watch to ask for water on deck. And at the same time as I ordered port helm the captain came on the bridge and ordered "Hart aport," and took over the command.

Q. What then did you do? A. I ran down on the boat deck and then on to No. 4 hatch, and took a water hose and commenced to extinguish.

Q. When you got to the main deck where No. 4 hatch was, was there any other person or persons there? A. Yes.

Q. Who was there? A. On the boat deck I en- (635) countered the chief officer and the second officer, and there were several others; and on the No. 4 hatch there were also several others.

Q. Who were these others? Not necessarily by name, but were they members of the crew or not? A. Yes, they were members of the crew.

Q. Will you tell us what you did when you got to the main deck? A. I got hold of a hose and commenced to extinguish.

Q. From where did you work? A. From the port side of the No. 4 hatch.

Q. Will you tell us what you saw when you arrived at that spot? A. I saw that there was a fire on the top, and I was just going to jump up on top of the naphthalene, because it didn't burn in the tier that was closest to the No. 4 hatch, but then I saw that it was burning between the second and third tiers from the top, and I put the water on there in order to try to extinguish it and prevent the fire from getting to No. 4 hatch.

Q. When you jumped or got onto the top of No. 4 hatch you have mentioned that you saw fire on top. Will you explain where on top you saw the fire? A. It was on top of the stowage of bags, about at (636) the middle of the stowage.

Q. When you say "middle," are you referring to fore and aft or side to side? A. Sideways.

Q. And abreast of No. 4 hatch, how was it, in a fore and aft direction, that middle spot? A. It was a little forward of the middle of the hatch.

Q. You have referred to the second and third bags. Will you explain what you mean by that?

The Interpreter: He said "tiers."

Mr. Pyne: I am sorry, the second and third tiers of bags.

A. I meant on the side of the stowage between the second and third tiers.

Q. Which side? A. On the inside of the stowage.

Q. And second and third tiers from where? A. From the top.

Q. What did you see there? A. I saw that it was burning there.

Q. With respect to the bags above that place on the side where you saw the burning on the side, what was the condition on the top? A. They didn't burn.

• • • •

(647) • • •

Cross examination by Mr. Stonebridge:

• • • •

(648) • • •

Q. Did you know Captain Inge Svendsen? A. Yes.

Q. He was marine superintendent for Herlofsen, was he not?

Mr. Pyne: I request that a time for this be fixed, your Honor.

Mr. Stonebridge: In 1952.

A. I assume so.

Q. Why do you assume so?

Mr. Pyne: I move, your Honor, to strike out what the witness assumes.

Mr. Stonebridge: Well, I am going into it, why he is assuming it. What more do you want?

The Court: It is cross-examination.

A. I have heard it.

• • • •

(651)

Cross examination by Mr. Longley:

Q. You told us that you had made 19 or 20 voyages between European ports and United States ports on Black Diamond vessels. A. Yes.

Q. Do you mean ten in one direction and ten in the other, about? A. 19 or 20 each way.

Q. Now, dealing with the westbound voyages, that is, from North European ports to United States ports, did I understand you to say that on each one of those voyages where you sailed there were carried a stow on deck of this naphthalene? A. Yes, that is right.

Q. And in each one of these prior voyages on Black Diamond vessels the naphthalene was stowed on deck at Antwerp and Rotterdam, was it? A. Yes.

Q. And in each case I understood you to say that it was stowed on deck as it was stowed on the "Black Gull" on her last voyage? A. Yes.

Q. That is, it was stowed approximately 6 feet high, made fast by nets but without any cover other than the nets over the top or sides, is that correct? (652) A. That's right, except in regard to one voyage.

Q. Tell us about that one voyage. A. It was a voyage during the winter, a small part of the naphthalene on deck,

on the forward deck, was covered by tarpaulins in order that it shouldn't disappear—in order that it shouldn't become wet, and that tarpaulin was supplied by the shipper.

Q. Dealing with other voyages where no tarpaulins were carried, some 19 additional voyages, I take it from what you say, when these other vessels on these 19 voyages sailed from their last port of loading in Antwerp, their deck load of naphthalene in this case was completely uncovered except as there may have been rope slings? A. That's right.

Q. And the stow of naphthalene in each of those cases remained uncovered from the time the ship sailed from her last port of loading until that naphthalene was discharged at the port of discharge in the United States; is that so? A. Yes.

Q. What did you know, if anything, about the characteristics of napthalene? A. I know it is a kind of dangerous cargo.

(653)

Q. Dangerous in what way? A. I don't know.

Q. Did you ever receive any warning from anyone about its dangers? A. I received orders not to smoke on deck.

Q. Who gave you those orders? A. The master.

Q. Did he tell you why you were not to smoke on deck? A. He said it was dangerous cargo.

* * * *

(655) * * *

Q. Then there was a gangway or passageway about three feet in width extending along the hatch coaming, with the hatch coaming on one side and the stow of naphthalene on the other side; is that not right? A. Yes.

Q. And that passageway was the only way that the

crew could go forward to their duties from their quarters in the poop, is that not correct? A. Yes.

Q. And the crew went back and forth through that passageway watch by watch, did they not? A. Yes.

Q. Throughout the 24 hours, day and night? A. Yes.

• • • •

(660) • • •

Q. Dealing now with the picture marked Petitioner's Exhibit Q, this is also on the port side looking aft, is it not? A. Yes.

Q. And that is the deck on which the passengers usually walked? A. Yes.

Q. Now at the end of this deck as appears in this picture marked Petitioner's Exhibit Q, you will find to the left a companionway, a staircase, will you not? A. Yes.

Q. To where did that ladder lead? A. It goes down to the boat deck.

Q. And then there was a ladder that led from the boat deck down to the main deck? A. Yes.

Q. This picture, Petitioner's Exhibit S, shows at the right, does it not, the stairway leading down (661) to the boat deck from—you call this the sun deck in Petitioner's Exhibit Q? A. That is not the sun deck. That is the deck of the lower bridge.

Q. Well, all right. This Petitioner's Exhibit S shows the stairway coming down to the boat deck from the lower bridge deck? A. Yes.

Q. And then showing at the after end of this picture there is an opening in the bulwarks? A. There is an opening.

Q. And that is where the companionway was from the boat deck down to the main deck? A. Yes.

Q. One standing in this opening here and looking down the stairs would look immediately on top of the stow of

naphthalene on the port side of the after deck of the "Black Gull"; isn't that true? A. He won't see right down on it.

Q. Why not? A. Because the bags of naphthalene are stowed somewhat abaft the foot of the ladder.

Q. I see what you mean. The stow of naphthalene about six feet high started about three feet aft of the bottom of the ladder; isn't that so? A. Yes, about three feet. A little more.

(662)

Q. During the course of the voyage of the "Black Gull," what occasion, if any, did you have to examine the stow of naphthalene on the after deck? A. When I was on watch at sea I had my watch on the bridge, and it was my job to look both ahead and astern.

Q. The only examination you made of the stow of naphthalene on the after deck was looking toward the stow from your position on that vessel's bridge; is that what we are to understand? A. I was not allowed to leave the bridge.

Q. Well, I guess you probably indirectly answered my question.

Mr. Longley: Put my question to him and ask him if that is not so, that during the whole voyage the only examination he made of the stow of naphthalene in the after deck was from his position on the bridge of the ship.

The Witness: (Through interpreter) That is right.

* * * *

(665) * * *

Q. Well, in any event there came a time that you could not go forward to where you were in the poop? A. Yes.

Nils Valen—for Petitioner—Cross

Q. And that was because there was a wall of flame from the naphthalene across the ship between you and amidships? A. Yes, on both sides.

• • • •

(673) • • •

Q. Now, your ship made about 16½ knots, did it not? A. Yes.

Q. On the night of the fire you had a port breeze, did you not? A. Yes, a little on the port.

(674)

Q. So anything thrown over the port side of your ship, by the very nature of things, would be carried aft and over to starboard, isn't that so? A. That is pretty hard to tell.

Q. Well, a breeze blowing from the port necessarily carries anything to starboard, doesn't it? A. Yes.

Q. And as you were going 16½ knots ahead, anything thrown over on the port side is going to be taken aft, isn't that so? A. Yes, it ought to, it should.

• • • •

(675) • • •

Q. And you were at the starboard and you looked aft, did you? A. Yes.

Q. And at that time you couldn't see flames from the starboard side, could you? A. I saw a small flame.

Q. And then from what you saw you knew it was on the port-side of your ship? A. Yes.

Q. And so you went over on the port side of your ship, did you not? A. Yes.

Q. And then you went down, was it the sun deck you told us? A. Yes.

Q. And the sun deck, is that level with your upper bridge? A. At the same height as the lower bridge deck.

Nils Valen—for Petitioner—Cross

Q. And then you could look right down on top of the stow of naphthalene? A. I couldn't see directly down.

Q. Perhaps I don't understand the situation. Why not?

(Witness indicates on photograph)

A. If I am standing right out there I can't see (676) directly down. I am looking at an angle.

Mr. Pyne: Pointing to the after end of the deck marked "S. D." on Petitioner's Exhibit R.

• • • •

Q. Were you standing on this deck marked "S. D."? A. Yes.

Q. And you were standing at the after end of this deck? A. Where I was standing exactly I am not certain.

(677)

Q. Well, in any event, the stow of naphthalene was right in front of you, wasn't it? A. It was several feet aft, towards the naphthalene.

• • • •

(678) • • •

Q. As you stood where you did stand on the sun deck you could see the stow of naphthalene down below, couldn't you? A. Yes.

• • • •

Q. From the position where you were on the sun deck, as you looked aft at your stow of naphthalene, that is what you were seeing, was it not? I am laying before you Petitioner's Exhibit P (indicating). A. This drawing here is made in order to elucidate what I saw from No. 4 hatch and not from the sun deck.

Q. Well, in any event, that is what you saw when you

looked down on the top of the stow from the sun deck, isn't that true? (679) A. I saw a flame and smoke.

Q. And you saw that flame and smoke at the top of the stow of naphthalene about where you have marked that in red?

The Court: About where he has marked it in red.

Mr. Longley: About where he has marked it in red. That is not where I marked it, but he has marked it.

A. Yes.

* * * *

(680) * * *

Q. Mr. Valen, just before the recess you may recall I was interrogating what you saw when you looked down from the sun deck and you told us that you saw flames at the top of the stow of naphthalene? A. Yes.

Q. And I asked you and you told that where you saw the flames was approximately the position marked in red on this Petitioner's Exhibit T? A. Yes.

Q. The position to which you have referred I have marked in Exhibit T with the word "fire" with an arrow pointing to that area. As you stood there——

Mr. Pyne: Captain, I cannot hear you back here on the answers.

Mr. Longley: I will step back here.

Q. Now as you stood there at the after end of the sun deck all you could see was that fire on the top of the stow with black smoke, isn't that true? A. It was all that I observed at that time.

Q. Now how big an area, approximately, did this fire cover at that time? A. I can't answer that.

Q. I appreciate you can't give it to us in (681) inches

but was there an area two or three feet across or was it just a few inches across? A. It is impossible to say how much it was because I only saw a little flame and then I ran back again immediately.

Q. And it was about in the position you marked on Exhibit T, I think you told us, approximately midway between the bulwarks and the edge of this stow, three feet inboard—I should say outboard from the hatch coaming? A. Yes, it is about at the place.

Q. And I think you said it was somewhat forward than midway of the No. 4 hatch, in a fore and aft direction? A. Yes, a little forward aft than the middle of the hatch.

• • • •

(682) • • •

Q. Then having turned the ship, already having given the information to the master, you went aft to No. 4, did you? A. Yes, when the captain had taken over the command I went down.

Q. You went down on the starboard side to go aft? A. I went down on the port side.

Q. And then you got up on the No. 4 hatch? A. Yes.

Q. As you stood on No. 4 hatch, the stow of naphthalene was a foot or two higher than the top of the hatchway, was it not? A. About two feet.

Q. And as you looked toward the stow the first (683) thing you saw was still the flames and the smoke coming up from the top of the stow at the position you had seen when you were on the sun deck, isn't that so? A. Yes, I saw flame and smoke.

• • • •

(684) • • •

Q. In any event, having done what you have mentioned, you went aft and you picked up the hose after the engineers had given you pressure, isn't that true? A. Yes.

Q. And then you planned to jump up on top of the stow of naphthalene and use the water from the hose on the area of flame which you had already seen at the point marked "fire" on Exhibit T? A. Yes, I wanted to try to extinguish the fire.

Q. And then you found you couldn't get up on top of the stow because the flame was working towards you, isn't that correct? A. Yes, I could get up.

Q. Why didn't you? A. Because it was burning out from the side of the stow.

Q. Now you are referring, I take it, to this point that you have marked in red on the side of the stow on Exhibit T? A. Yes.

Mr. Longley: Now let us see how I will mark (685) that. How do you want me to mark that, Mr. Pyne?

Mr. Pyne: Any way you want is all right with me.

Mr. Longley: Well, I will call this "fire(2)" (marking).

Q. Now do I understand that that was the first time you saw any fire at that point which I have marked "fire(2)"? A. Yes, I didn't see that before I got down on No. 4 hatch.

* * * *

---

(706) * * *

GUSTAVE OLSON, called as a witness on behalf of the Petitioner, having been first duly sworn through the interpreter, testified as follows:

Direct examination by Mr. Pyne:

Q. Mr. Olson, you are chief engineer of vessels? A. Yes.

Q. Do you hold any license? A. Yes.

Q. What license do you hold and how long have you held it? A. I have had third class since 1936.

Q. Is that a Norwegian engineer's license? A. Yes.

Q. How long have you been going to sea in total number of years? A. About 30 years.

Q. What vessel are you now serving on? (707) A. The "Black Hawk."

Q. You were formerly chief engineer of the "Black Gull"? A. Yes.

Q. When did you join the "Black Gull" as chief engineer? A. I was sent down to Lanskrooner to supervise the building.

Q. And from the time the vessel was built down to the time of the fire were you chief engineer of the vessel? A. Yes.

• • • •

(721) • • •

Cross examination by Mr. Longley:

• • • •

(722) • • •

Q. Chief, it is true, is it not, that sparks do come from the funnel of a diesel-powered ship at times? A. Yes, that's right.

Q. You had no spark arresters over your funnel, did you? A. No, I haven't seen that on any ship.

• • • •

(732) • • •

HARRY KRISTIANSEN, called as a witness on behalf of the petitioner, was duly sworn through the interpreter, and testified through the interpreter as follows:

Direct examination by Mr. Pyne:

• • • •

Q. You formerly were a member of the crew of the "Black Gull"? A. Yes.

Q. You were second officer on the "Black Gull" on the voyage on which the fire occurred? A. Yes.

Q. For how many years total have you been going to sea? A. About twelve years.

Q. Do you hold any license? (733) A. I got the chief officer's certificate. I also hold a master's certificate.

Q. Mr. Kristiansen, we are having trouble back here in hearing, so speak up a little bit. How long have you held a master's license? A. Half a year.

Q. And how long have you held a mate's license? A. Since June 1950.

• • • •

(738) • • •

Q. Now, you stated that you were in your bunk on the night of July 18, 1952. A. Yes.

Q. What caused you to leave your bunk? A. One of the stewardesses came and woke me up and said there was fire on deck.

Q. What did you do then? A. I turned out immediately.

Q. Where did you go? A. Out on deck.

Q. Whereabouts on deck and what did you do? (739) A. I went out on the boat deck, got ahold of a hose and connected same up and sprayed water from the boat deck down on the fire.

Q. Where was the fire as you saw it? A. About in the

middle of the stowage, at about the middle of No. 4 hatch.

Q. How long did you continue to play water from that place? A. About 10 minutes.

Q. And where did you go then? What did you do? A. Then I went out on the deck and tried to get out from the door on the port side, while at the same time I tried to lock the door there which was standing open.

Mr. Pyne: I did not get that.
(Answer read)

Q. Port side where, and what door are you talking about? A. I am talking about the port door in the midship building. That is the after door.

Q. Did you close the door? A. I couldn't get to it on account of the fire.

Q. Now, where—if you will, please, tell us where you went and what you did. (740) A. I went all through the rooms on the port side to see if there were anybody there.

Mr. Pyne: To see what, Captain?
The Interpreter: ". . . to see if there were anybody there."

Q. Well, proceed and tell us what happened. A. Then I went back on the boat deck and probably continued to spray water. At that time there was already fire on the after end of the port lifeboat.

• • • •

(764) • • •

Cross examination by Mr. Longley:

Q. Then the nearest you ever came to the fire, then, was on the boat deck aft? A. Yes, the after part of the boat deck.

Q. And you played the hose on when you saw the flame in the naphthalene, on the port side, did you not? A. Yes.

Q. And that flame was about halfway across the stow from port to starboard, was it not?

Well, I did not put it very well. I will withdraw that question. The flames were about halfway on the top of the stow between the hatch coaming and the port side of the ship. A. Yes.

Q. And that is the only place you saw any flame, (765) was it not? A. To begin with, yes.

Q. And then the flames extended over the top of the stow with great speed, did they not? A. I won't say very fast, but it spread.

Q. And there was a high flame and much black smoke; isn't that true? A. It was a flame. I can't say the height of it but it was very much smoke.

Q. When you first got there and saw the flame, approximately how large an area was it burning on the top of the stow? A. I can't say.

Q. How many hoses were playing on the fire when you got there? A. One was connected when I got there, two or three others were connected just afterwards.

Q. And these were all four fire hoses connected up to the water system of the vessl? A. Yes.

Q. And that water was played on this fire under pressure from the fire hoses, was it not? A. Yes.

Q. And instead of the fire being extinguished it spread from the stow of naphthalene on the port deck; isn't that so? A. Yes.

Q. And then the fire spread the naphthalene on (766) the starboard side of the deck? A. Well, that was after the lifeboat had been put into the water.

Q. You mean you didn't see that, you didn't see it burning on the starboard side? A. Yes, from the lifeboat.

Q. And you saw molten naphthalene blazing and running

down the ship's side, did you not? A. Yes, after the lifeboat was clear of the ship.

Q. And from where you were in the lifeboat you saw the fire burn from aft forward and destroy the midship structure, did you not? A. Yes.

Q. And then the fire spread forward and consumed the naphthalene on the forward deck, both port and starboard, did it not? A. Yes.

• • • •

(769) • • •

Q. Well, I got the wrong dates. The 13th of July (handing). A. (Examining.)

Q. On that day your vessel pitched and you had spray over the decks and hatches, did you not? A. Some pitching with spray over deck and hatches.

Q. And on the 17th you had a force 6 wind, did you not? A. Yes.

Q. Is the force of your winds computed on the Beaufort scale? A. Yes.

Q. And on the 12th your vessel pitched with spray over the deck and hatches, isn't that true? A. (After examining) Yes.

• • • •

(770) • • •

Q. That is fair enough. However, as far as concerns the "Black Gull," she had her decks covered with naphthalene, both forward and aft, isn't that so? A. Yes.

Q. As the naphthalene was stowed on the "Black Gull" it was exposed to the sun's rays throughout the voyage across the Atlantic, wasn't it? A. Yes, the day that we had sun.

Q. That is fair enough, too. And you know (771) that the naphthalene was stowed in jute bags? A. Yes.

Q. What did you know when this voyage commenced

concerning the characteristics of naphthalene? A. What we call dangerous cargo.

Q. What was the danger as you understood it? A. That the cargo was inflammable.

Q. Did you receive any particular warning from anyone as to the care to be taken in connection with it? A. Not to smoke on deck.

Q. You did smoke when you were on watch on the bridge and in the chart room, did you not? A. Not on the bridge but in the chart room.

Q. What about the wheelhouse? A. Yes.

• • • •

---

(775)

Deposition of Dr. W. N. E. Van Rossem

Mr. Pyne: I would like to read, your Honor, from the deposition of Dr. W. N. E. Van Rossem.

• • •

Direct examination by Mr. Pyne:

"Q. Doctor Van Rossem, where do you reside? A. At The Hague.

"Q. What is your occupation? A. I am a barrister and solicitor at Rotterdam."

• • • •

"A. I have practiced since 1917 in Rotterdam, always in the same firm."

• • • •

(776) • • •

"Q. Are you admitted or licensed to practice in any Netherlands court or courts and, if so, what court or courts? (777) A. Of course I am. All Dutch barristers

are qualified to appear before all courts in the Netherlands including the 'Hoge Raad,' what you call in America the Supreme Court, without any exception."

• • • •

(778) • • •

"Q. During your legal career have you specialized in any branch or branches of the law? A. Yes, in maritime law."

• • • •

(779) • • •

"Q. Are there now in force, and were there in force (780) in June and July 1952, any general laws, rules or regulations in the Netherlands concerning loading, stowage and carrying of dangerous cargoes on vessels? A. Yes, sure.

"Q. Will you state for us please what those laws were, and identify them? A. I am referring to what we call the 'Schepenwet.'

(Pointing to Beerman Exhibit 2 for identification.)

"Q. Will you tell us what part or portion, and identify them please, of that law refers to dangerous cargoes? A. On the strength of the Schepenwet the Crown has issued the Schepenbesluit. The Schepenbesluit in force in June 1952 was the Schepenbesluit issued the 26th of November 1932, Staatsblad 563.

"Q. I notice that you have yourself produced here and have among your papers a book to which you have just referred and which you are using and which down in the lower right hand corner has on its cover after the word Zwolle the year 1950. Is this book which I now show you the same as the book to which you have referred and which you have produced? A. Yes."

And I asked to have the book marked for (781) identification and it was produced and marked, your Honor.

"Q. Will you please identify what part or portion or section of this Van Rossem Exhibit 1 for identification covers the matter of dangerous cargoes, identifying it by section and also by pages of the book? A. As I told you the word naphthalene is never mentioned, but the only article which might be referred to is article 94 on page 146 and the following pages, and if naphthalene ought to be considered as a dangerous cargo it should be in section 4 of article 94."

We then produced, your Honor, and had marked the certified translation by what they call in Holland an official, or, rather, sworn translator of Section 94. It was then marked as Exhibit 2 for identification.

I will offer it in evidence now, your Honor.

Mr. Zisgen: Your Honor, that is the same translation which has already been received in evidence as Libelants' Exhibit 34-A.

* * * *

(808) * * *

Cross examination by Mr. Stonebridge

"Q. During your direct examination, if I recall correctly, you stated that Dutch law applies only to Dutch vessels. Are there any exceptions to that general statement? A. I meant that this Dutch law applies to Dutch vessels.

"Q. The Schepenbesluit that has been referred to in the course of your testimony? A. That is stated in art. 2 of the Schepenwet. I might refer you to art. 69 subsec-

tion 1. Here it is stated that the officials of the Shipping Inspection are entitled to detain a vessel of foreign nationality in certain cases mentioned in the article. Do you want a translation?

(809)

"Q. Would the interpreter please translate on the record art. 69 subsection 1?"

The translation follows:

"Apart from the provisions of art. 67 a Shipping Inspectorate official is empowered to detain a vessel of foreign nationality which does not in pursuance of articles 2 or 2bis fall under the present act, and which by reason of the unsound condition of the hull, the gear or the equipment, or as a result of bad stowage endangers the persons on board."

• • • •

Cross examination by Mr. Zisgen:

"Q. Are you a member of the Maritime Law Association of the Netherlands? A. No, I am not."

• • • •

(810) • • •

"Q. Is it not a fact that in general the Maritime Law of the Netherlands is based upon the same principles as those embodied in The Hague Rules? A. It is."

• • • •

(811) • • •

"Q. Do you agree that under the law of the Netherlands the parties to a contract for the carriage of goods by sea may lawfully provide that their contract may be governed by The Hague Rules in whole or in part? A. Yes.

"Q. And that is true, is it not, whether the contract is for the carriage of goods to the Netherlands, or from the Netherlands? A. They always may.

"Q. It is a fact, is it not, that under the Commercial Code of the Netherlands, the Maritime Law, the carrier is under an obligation to load and stow the goods properly and carefully? A. Yes.

"Q. And that is true of all goods which he accepts for carriage? A. Yes.

"Q. That obligation applies to goods carried on deck with the shipper's permission? A. Yes.

(812)

"Q. And you agree, do you not, that the carrier may not by contract exempt himself from that obligation? A. He surely may not when the ship is outward bound.

"Q. And by outward bound do you mean bound from the Netherlands to a foreign port? A. I refer to article 517d.

"Q. As printed in Beerman Exhibit 1"—now Libelants' Exhibit 33—"for identification, is it not? A. Yes, page 91.

"Q. And is it not a fact that in determining whether a carrier is living up to the obligation of careful proper stowage, the Netherlands courts take into account the nature and the characteristics of the goods themselves? A. Sure.

"Q. And is it not also a fact that in determining whether the carrier is living up to that obligation, the Netherlands courts take into account the whole stowage of all the goods on the ship? A. Sure.

"Q. And that includes, does it not, goods which may have been stowed on the ship at prior ports including foreign ports? (813) A. Yes. You mean that the stowage in a foreign port——

"Q. If the ship comes to a Dutch port with goods stowed

at foreign ports on board— A. and other goods are stowed in Dutch port——

"Q. Yes. A. Oh yes.

"Q. And then, to sum up our exchange, the Netherlands courts do take into account the goods that have been stowed at those foreign ports and the goods stowed at the Dutch ports? A. Yes.

"Q. Now there is a royal decree relating to the stowage and carriage of dangerous goods and that is the decree of November 26, 1932, as amended on December 27, 1939, is it not? A. Yes.

"Q. Check that if you wish. A. November 26, 1932, there was——

"Q. And tha' was amended December 27? A. Replaced by another one, that is not the same.

"Q. It was the replacement of December 27, 1939? A. No, surely not.

"Q. Let us go back. I asked you whether there was (814) a decree of November 27, 1939, relating to dangerous goods. Your answer was yes. Then as I understood you that was replaced. A. In 1952. The 31st of December 1952 a new Schepenbesluit came into force.

"Q. As of June and July, 1952, it was the decree of November 26, 1932, as amended December 27, 1939, which was in effect? A. It has been amended several times, in 1936, 1937, 1939, 1940, 1947, 1948, 1949.

"Q. And as amended up to June and July 1952 and as in force at that time that decree contained a definition of dangerous goods other than liquids, did it not? A. Yes, a definition. I don't know whether I must say definition, but it mentions in art. 94 sub 4 goods which are no liquids, solid goods.

"Q. And in that part of it to which you have just referred, what does it say?

"Mr. Stonebridge: We have a certified translation of that sub-section.

"Q. And the portion to which you referred is sub-section 4 of sec. 94 in that translation, is it not? A. Yes."

(815)

Mr. Longley: I think at this point it might be well to read Subsection 4 of Section 94.

"Solid substances which are easily inflammable or which when heated to 70 degrees Celsius may evolve combustible gases, must be carried in gas-tight containers. These substances must be stowed at a safe distance from bulkheads and pipe lines which may be exposed to heating. If stowed on deck they may not be exposed to direct rays of the sun. The substances mentioned in the present sub-section and substances mentioned in subsection 156 and 7 may not be stowed in the same spaces."

(Continued reading)

"Q. You told us did you not that you are not a chemist? A. That's right.

"Q. You are not in a position to say of your own knowledge whether naphthalene is easily inflammable, is that correct? A. I know it is, but

"Q. You are not in a position to say of your own knowledge whether naphthalene when heated to 70 C may evolve combustible gases? A. I never made a check but I take it for granted.

(816)

"Q. You agree do you not, that whether naphthalene is inflammable is a matter of fact? A. I think so.

"Q. And it is also a matter of fact whether naphthalene will evolve combustible gases when heated to 70 C? A.

I am not familiar of American law, but I would call it a matter of fact."

I should say parenthetically that "centigrade" and "Celsius" are the same. I did not know it until this case—"Celsius" and "Centigrade" are the same thing.

Mr. Pyne: That is right.

Mr. Stonebridge: Agreed.

Mr. Longley: (Reading)

"Q. You agree, do you not, that the mere practice of persons who deal with naphthalene does not ultimately determine either of those facts? A. I agree."

• • • •

(818) • • •

"Q. Now as I understood you the only authority in which any Dutch shipping official could make regulations concerning dangerous goods was to be found in July 1952 in sub-section 13 of art. 94, is that correct? A. No, that is not correct.

"Q. That is what I understood you to say. A. That is incorrect.

"Q. What are the facts? A. That the whole of the article 94 is dealing with this matter. Sub-section 13 is only a part of it.

"Q. You do not consider that under Netherlands law there may be authority in shipping officials to make regulations to carry into effect let's say the provisions of (819) the Hague Rules? A. No, surely not. We are not in a Hitler country. There should be an act.

"Q. And what do you mean by act? A. An act of Parliament.

"Q. What I might call a statute? A. That's right.

"Q. Am I correct that there are in the Netherlands

first these acts of Parliament, second Royal Decrees? A. If provided for by an Act of Parliament.

"Q. And only if provided for in an Act of Parliament. What is a ministerial decree? A. That is something the Act or Royal Decree has delegated a certain power in the minister without the Crown.

"Q. Then a ministerial decree would be one which did not require the Crown's assent? A. That is correct.

"Q. Then beneath those ministerial decrees or regulations— A. If they are provided for in a higher region.

"Q. So that in a sort of hierarchy we might have an Act of Parliament which authorizes the Crown to issue a decree— (820) A. Or the minister.

"Q. Or that Act of Parliament might authorize the minister to issue a decree without royal consent? A. Yes.

"Q. Similarly, I take it, a Royal Decree if authorized by a statute of Parliament might authorize a minister to issue a decree in accordance with the Royal Decree or the Statute. A. That is right.

"Q. Then in turn in a proper case the ministerial decree might authorize an appropriate official to issue regulations under it, is that correct? A. I see no objection, however, I don't know an example by heart.

"Q. You know of no legal reason why that situation could not exist? A. No.

"Q. In other words, so long as you have at the top of the pyramid an Act of Parliament, there is no prohibition in the law of the Netherlands against delegation on down through a Royal Decree, a ministerial decree and the regulations to lower officials to exercise certain powers, is that correct? A. Yes, I think that is correct. The official may not be too low, but——

(821)

"Q. That is a question of degree. A. A question of policy. For instance here the Royal Decree, not a min-

isterial decree, has delegated certain powers to the Inspector General of Shipping.

"Q. That is what I was coming to. A. Mind you, it is the Royal Decree which has delegated power.

"Q. To the Inspector General to make regulations? That was the situation in July 1952? I take it that there is no question that in June and July 1952 the Inspector General of Shipping had the power to make regulations with respect to the carriage of naphthalene. A. No, that is not correct. Only if naphthalene is meant in article 94.

• • • •

(823) • • •

"If I have misstated what you said I am sorry. You can conceive of a situation, can you not, in which shippers and carriers both ignore or violate a statute or a regulation? A. I can conceive that they do once or twice, but not regularly.

"Q. You do not want us to understand that under the law of the Netherlands one or two violations of a statute are crimes but more than that are not? A. Of course not, but one or two might not be discovered, that is what I mean.

"Q. Your point is simply that the existence of a practice, an invariable practice over a long period of time, itself establishes that the practice does not violate the law? A. No, the practice may not violate the law.

(824)

"Q. I am not sure that I am quite clear what your last answer means. A. When there is a law, a deviating practice can never be stronger than the law, can never put aside the law.

"Q. And you reason from that, if there is an invariable practice which has continued for a long time, that in itself is conclusive evidence that there is not a violation

of law involved in the practice, is that correct? A. I think so.

• • • •

(825) • • •

"Q. And in your view no law, no statute, no decree, no regulation can have any binding force in the Netherlands unless published in one or the other of those two publications. A. That is right.

"Q. You told us that acts of Parliament and royal (826) decrees were expressly required to be published. Can you give us the reference to the law or decree so requiring? A. Constitution, art. 74. It says that laws have to be made for the promulgation of acts of Parliament and royal decrees.

"Q. And as to ministerial decrees I understood you to say that there is no such express requirement. A. There is an express requirement but not in an act.

"Q. That express requirement appears where? A. That is stated by the Supreme Court as I mentioned.

"Q. That is the decision in Jurisprudence 1936 No. 490. Are you familiar with the doctrine stare decisis? A. I know what it means, that you are governed by decisions.

"Q. Yes. The doctrine of stare decisis is not followed in the Netherlands, is it? A. No, it is not, at least not as such.

"Q. And I take it, Doctor, that what you mean is that, while the courts may not be legally obliged to follow earlier decisions, in practice they accord them respect? (827) A. Not only respect but they accord them a very considerable degree of guidance.

"Q. And it is on the basis of that decision in 1936 that you base your opinion that ministerial decrees and regulations must be published in one or the other of the publications which you mentioned in order to have binding force?

A. Not only on that decision. That decision only reflects the opinion of the Dutch law people.

"Q. The Dutch lawyers? A. The judges as well. Of the Dutch people who have studied law. That is what I mean.

"Q. That is merely an opinion, is it not? A. Oh, no, that is not an opinion. It is said so——

"Q. Perhaps I have not made myself clear. When I said that is only an opinion, I was referring to your statement that the Dutch lawyers and Dutch students of the law held that view. A. Yes, that is right.

* * * *

(828) * * *

"Q. You told Mr. Stonebridge, as I understood you, that the shipping officials were authorized to detain foreign vessels from sailing. A. Yes.

"Q. If as a result of bad stowage their condition (829) would endanger the persons on board? A. Yes.

"Q. You told me I thought that the purpose of the regulation requiring shippers to notify the shipping officials when dangerous goods were to be shipped was for the safety of the persons on board? A. Yes, I did.

"Q. Then I don't understand why you seem to feel that this obligation imposed by sub-section 12 of art. 94 is not applicable when the goods are to be shipped on foreign ships. A. My conclusion is that the law does not say so, but nevertheless according to art. 69, sub-section 1 of the Schepenwet, if the Shipping Inspection discover anything mentioned in that sub-section, they are entitled to detain the vessel, and moreover the local harbormaster has an analogic power, because he looks after the safety of the harbors. So if any ship by the way of stowing should endanger the harbor he has the right to detain it as well.

"Q. And both of those authorities would be entitled to excercise their power of detention even though the shipper

had not notified them that dangerous goods were to be shipped? (830) A. Yes, that is correct.

"Q. The danger both to the persons on board and to the safety of the harbor would exist equally whether A. Yes, of course."

• • • •

"Q. According to your view, there has not been ever any regulation regarding the carriage of naphtha- (831) lene? A. Yes.

"Q. And there are not now? A. Correct.

"Q. Why, if that is so, would the Shipping Inspector of the Second District send to Van Nievelt Goudriaan & Company a copy of the proposed regulations which has been marked Van Rossem Exhibit 5d?"

• • • •

(847) • • •

"A. Mr. Visser, the man who signed it, is a very courteous man. He thought perhaps that Messrs. Van Nievelt Goudriaan would be interested to learn what was cooking and is still cooking.

"Q. Even though you are not a chemist, you will agree I think that any dangerous characteristics which naphthalene will have when these proposed (848) regulations are published, it has now? A. The danger is not determined by any regulation, of course not.

"Q. The same is true as of June and July 1952, is it not? A. Yes, it has always been true and it will always be true.

"Q. And yet in your view for a substantial period of time the Inspector General of Shipping, by delaying the issuance of the regulations which are to be published in this book— A. Beg pardon, the minister.

"Q. Very well, the minister by delaying the issuance of the regulations which are to be published in this book, has made it possible for shippers and carriers alike to

expose persons on board ships and the harbors in which those ships are loaded to whatever dangers there may be in naphthalene, without any hindrance from him. A. Yes, sure.

"Q. Does not that seem to you to be a strange attitude on the part of an official charged with the duty of preserving safety? A. I take it that apparently they don't (849) consider the danger very large, or even they don't see any danger perhaps.

"Q. If they don't see any danger, then what is the statutory authority for the proposed issuance of the regulation? A. The statutory authority must be in first instance the Schepenwet and in second instance the royal decree, and if naphthalene does not fall under any regulation of art. 94 or 99, not a single authority is entitled to make any regulation concerning naphthalene.

"Q. The fact that the shipping authority proposes to issue a regulation concerning naphthalene indicates a determination by the authority that it is entitled to issue such a regulation, does it not? A. It looks like they are entitled and that is perhaps why they quote art. 99, overlooking the fact that art. 99 mentions gas-tight containers.

"Q. And that determination of theirs, whether it is correct or not, in turn involves a determination that naphthalene falls within the definition of dangerous goods, does it not? A. I can't say that, for as I pointed out before there is a discrepancy between the reference to art. 99 on the one side and the close-woven bags (850) on the other side, and at last, if the minister should mention in his book to be published any regulation whiel is not in accordance with either the act or the royal decree, it is the duty of the courts to decide that this regulation is invalid."

• • • •

"Q. Do you not agree that negligent stowage of cargo, even though the negligent method is not (851) specifically

prohibited by a regulation, is a violation of your Netherlands maritime law? A. Yes. Not of the penal law but of the commercial code.

"Q. Embodied in Beerman exhibit 1? A. Negligent stowage is prohibited, of course.

"Q. I am asking you to assume negligence in the question I put to you, and I am asking you, if it is not a fact that negligent stowage violates the Netherlands Code of Commerce. A. Yes."

• • • •

(853)

Direct examination by Mr. Pyne:

"Q. I show you, Mr. Van Rossem, a letter which is dated 30 July 1954"—which has been here marked Libelants' Exhibit 35 for identification—"and ask you whether or not at my request you made any investigation with respect to that letter and its contents? A. Yes, I did."

Mr. Longley: Before we go on, I should now offer this letter in evidence. It is marked for identification solely heretofore.

(Libelants' Exhibit 35 received in evidence.)

Mr. Longley: Perhaps since it is now in evidence, I should read it to your Honor.

The Court: Yes, I would like to get the continuity.

Mr. Pyne: The translation is attached.

Mr. Longley: It is from the Inspector General for Shipping——

Mr. Pyne: It is signed by a subordinate, who signed it. It is from that office but it is not signed by the Inspector General.

Libelants' Exhibit 35 Read into Record

Mr. Longley: Well, it is signed "Inspector (854) General for Shipping, per B. E. Van Bruggen."

It is dated July 30, 1954:

"Reference: S. S. 'Black Gull'"—It is on the letterhead of the Inspector General of Shipping, written from The Hague.

"In reference to your letter"——

The Court: To whom is it addressed?

Mr. Longley: To John Hudig & Son, Lloyd's Agents at Rotterdam.

"In reference to your letter No. 47631 Z B of July 23, I inform you that to my regret it is not possible to make a statement before the American Consul with regard to the regulations in force in this country relative to the transport of naphthalene.

"I therefore will limit myself to confirming that at the time of the loading of the S. S. 'Black Gull,' in July 1952 in the Netherlands, the following regulations were in force regarding the transportation of naphthalene:

"'Naphthalene must be packed in closely woven sacks, in wood, or in iron barrels or cases, which are closed in such a manner that any escape of the contents is completely obviated.

(855)

"'Stowage may be on deck or under deck.

"'On deck, the naphthalene must be protected from the effects of the sun's rays and kept at a distance from the crew's quarters.

"'Below deck in a well-ventilated dry space.

"'In both cases naphthalene should not be stored with explosives, compressed gases, substances which when damp give off inflammable

gases, on substances subject to heating or spontaneous combustion, oxygen containers; also it must be kept away from foodstuffs and rich and bitumenous paints (the latter can leak under influence of naththalene).'"

* * * *

(866) * * *

Cross examination by Mr. Zisgen:

"Q. Coming now, Mr. Van Rossem, to your visit to the office of the Inspector General of Shipping on August 20th, I take it that that office did not deny that the letter which has been marked Beerman Exhibit 3 for identification"—now Libelants' Exhibit 44 for identification—"was authentic. A. No, surely not.

"Q. Did you ascertain by whom the letter had been signed? A. It had a signature. Mr. Metz told me, that the signature is of no importance, for the letter must have been written by somebody else.

"Q. Someone else than the person who signed it? (867) Who is the person whose signature appears on the letter? A. I don't know him personally but it is an engineer.

"Q. An engineer in the office of the Inspector General of Shipping? A. Yes, Mr. Van Bruggen happened to be the highest in command available at the moment this letter was signed.

"Q. That is the highest in command available at the office of the Inspector General of Shipping? A. Yes."

Mr. Pyne says, "And also limited to the particular time that the letter was signed.

"A. Yes, at the moment the letter was signed.

* * * *

(869) • • •

Deposition of Dr. A. Blussee Van Oud-Alblas

Mr. Pyne: I would like to read from the deposition of Dr. A. Blussee Van Oud-Alblas:

Direct examination by Mr. Pyne:

"Q. Where do you reside?

(Mr. Smith reads the answers.)

"A. At Rotterdam.

"Q. What is your occupation? A. I am what you might call a lawyer; we call it 'Advocaat'.

• • • •

(870)

"Q. For how many years have you been a lawyer? A. For 26 years.

• • • •

(871)

"Q. And you, like all lawyers, are licensed to practice law before all law courts in the Netherlands? A. Yes, including the Supreme Court.

"Q. During your legal career have you specialized in any branch or branches of the law? A. Yes, Maritime Law, marine insurance, and quite another area: expropriation law.

• • • •

(872) • • •

"Q. Was there in force in June and July 1952 in the Netherlands any general laws, rules or regulations concerning loading, stowing or carrying on vessels of dangerous cargoes? A. Yes.

"Q. Will you identify the law for us. A. You are talking about June and July 1952?

"Q. That is correct. (873) A. We then had regulations regarding dangerous cargo in the so-called Schepenbesluit which I have here.

"Q. Will you identify the article in which that regulation is contained and the page of the particular book?

Mr. Pyne: The page will be different, your Honor. We have a later edition which was identified with different paging. The part we are interested in here is identical with Libelants' Exhibit 34-A, the translation of Article 94. If that is agreed, I won't mark this book for the time being.

Mr. Longley: That is all right; you do not need to put it in twice.

Mr. Pyne: (Continuing reading)

• • • •

(874) • • •

"Q. In your opinion as a matter of law, would or would not naphthalene come within the provisions of the decree in force in June and July 1952 concerning dangerous cargoes?"

Mr. Zisgen: We withdraw the objection.

Mr. Pyne: (Continuing reading)

"A. I can only answer this question from the legal side.

"Q. That is all you are asked to do. A. In order to come under the regulations regarding dangerous cargoes, this crude naphthalene should conform with section 4 of art. 94.

"Q. When you say that crude naphthalene should conform with that section 4 of art. 94, will you explain to us

what you mean by that? A. That it should be a solid commodity which can easily be brought to combustion or which when heated (875) up to 70° C would give combustible gases.

• • • •

(879) • • •

Mr. Pyne: (Reading)

"Q. If crude naphthalene were a product not within the definitions of art. 94, would any Government official or Government employee have authority or any legal right to make rules or regulations concerning crude naphthalene? A. No, because art. 94 opens the possibility, in section 11, of the Chief Inspector of Shipping giving supplementary regulations regarding stowage, package and carriage, but this is limited to the commodities meant in this article. Therefore he has not this authority outside the article and (880) regarding commodities not meant in this article.

• • • •

(890) • • •

Cross examination by Mr. Zisgen:

"Q. You agree that the maritime law of the Netherlands is based upon the same general principles as the Hague Rules? A. You should put it this way, that certain principles especially regarding stowage and care for the goods which you find in the Hague Rules you will also find in the Netherlands Commercial Code.

• • • •

"Q. Under the Netherlands Maritime Code an ocean carrier is obliged to properly and carefully (891) stow and carry the goods which she accepts for carriage, is she not? A. Those words you will not find in the Commercial Code, they are out of the Hague Rules.

"Q. Quite right. Does the essential obligation of the carrier under the Netherlands maritime law differ from the statement I have just made? A. The law says that the contract of carriage obliges the carrier to exercise due diligence for the preservation of the goods. It further states that the carrier is not allowed to stipulate that he shall not or only to a limited amount be liable for loss or damage caused by amongst others rough handling or insufficient custody of the goods.

"Q. Would you not as an attorney interpret the obligation of due diligence which you have just read us from the Code as roughly the equivalent of proper and careful stowage? A. Yes.

"Q. And you have told us that the carrier may not by contract exempt himself from that obligation, have you not? A. Yes.

"Q. That obligation extends, does it not, to (892) goods carried on deck with the shipper's permission? A. If the shipper has given the express permission of the goods to be carried on deck he has no complaint if damage is caused by the simple fact that the goods were on deck. Apart from that the carrier is under obligation for right handling and sufficient custody, which involves proper stowage.

"Q. In determining whether stowage of goods is or is not proper stowage, the Netherlands courts take into account the nature and the characteristics of the goods themselves, do they not? A. I think that the Netherlands law courts take into consideration everything which would be of importance in determining whether stowage is right or not.

"Q. And that would include the nature and characteristics of the goods, would it not? A. Among other things.

"Q. And it would also include what other goods were in stow on the ship, would it not? A. Yes.

"Q. And that would be true whether those other goods had been stowed at a Netherlands port or at a foreign port, would it not? (893) A. Yes.

"Q. Now, you agree, do you not, that whether a particular shipment of solid goods as distinguished from liquids comes within the definition in art. 94 is a matter of fact? A. I think this question has to be judged on the basis of the terms of art. 94.

"Q. Precisely. And art. 94 section 4 has two descriptions, does it not? In the first part, the first description is contained in the words 'easily inflammable', is it not? A. Yes.

"Q. And you agree, do you not, that whether or not particular goods are easily inflammable is a question of fact? A. Yes.

"Q. Do you not also agree that the question of whether particular goods will evolve combustible gases when heated to 70°C is a matter of fact? A. Yes.

"Q. And that fact will not be changed by the actual practice of people handling the goods, will it? A. The facts may not be changed, but it is the question whether all goods which might comply with (894) those facts would really be considered as coming under this section of art. 94. I pointed out already that to my opinion naphthalene, if it would be liable to combustion or even if it would develop combustible gases when heated up to 70°C should be considered as coming under this article. The practice I know and the practice which is common knowledge regarding those goods is that they are not considered to fall under this article.

"Q. Then what you are telling us is that the meaning of these words in section 4 art. 94 is to be determined not by the courts but by the practice of persons handling the goods, are you not? A. I think that when the court has to judge this question it will take all things into

account and it might certainly attribute value to the way in which this commodity as a matter of fact has been handled generally and for a very long time.

"I want to point out in this respect as regards the transport of this commodity by Netherlands vessels, I am not talking now about foreign vessels, those ships are under the constant control of the Shipping Inspection, subsequent to art. 10 Schepenwet the regulation of the Schepenbesluit. (895) For many years already Netherlands ships are carrying naphthalene and crude naphthalene not in gas-tight containers. This must be perfectly well known to the Shipping Inspection and if this would be in direct violation with a strict article like art. 94 section 4, the Shipping Inspection should have jumped in immediately years ago already.

"Q. That is the basis upon which you reach the conclusion that naphthalene is not within the purview of subsection 4 of art. 94? A. Yes. It makes it highly questionable to me at least.

"Q. But it is a matter of your opinion. A. Naturally.

"Q. You agree, do you not, that sub-section 4 of art. 94 contains no such exemption in its own terms? A. No.

"Q. It does not? A. No, it gives very strict rules to be observed.

• • • •

(903) • • •

"Q. Well, then, despite the fact that the book which the minister has been ordered to publish has not yet been published, am I correct that since 1939 at least there has been in the Inspector General of Shipping the (904) power to issue so called supplementary regulations governing the transportation of dangerous goods? A. Certainly, you will find it in section 11A, Art. 94 of the old Schepenbesluit.

Deposition of Dr. A. Blussee Van Oud-Alblas—Cross

"Q. The one in effect in July 1952? A. Yes.

"Q. And provided that the Inspector General proceeds in accordance with the law, he could have at any time within that period since 1939 made valid binding regulations for the transportation of naphthalene? A. If this would be dangerous cargo in accordance with art. 94 subsection 4.

• • • •

(915) • • •

Deposition of Capt. C. A. W. Bos

Mr. Pyne: This is Captain C. A. W. Bos, • • •

Direct examination by Mr. Pyne:

"Q. Captain Bos, will you tell us where your residence is? A. In Rotterdam.

"Q. And you are a Dutch citizen? A. Yes, sir.

"Q. By whom are you now employed? A. By Holland-America Lines.

"Q. For how many years have you been employed by Holland-America Line? A. For 28 years.

"Q. And during that period of 28 years will you tell us in what capacity or capacities you have been employed? A. First as an apprentice officer, then fourth, third, second and chief officer, and after that inspector of the Nautical Department and now I am chief of the Nautical Department.

• • • •

(918) • • •

"Q. While you were at sea and on the vessels on which you served, can you tell us how and where the naphthalene was stowed or carried, and I am speaking of crude naph-

thalene in bags particularly. A. It was always stowed on deck on the foreship and the aftership, never under deck.

"Q. With respect to whether or not it had any cover, what was the situation? A. When I served on the ships it was never covered.

"Q. What was the situation in that respect with the manner and place of stowage during your period of service as an inspector? (919) A. About six years ago, it may be five or seven years, some of the shippers asked to cover it up against rain or sea water, so after that time they covered it up, they don't wrap it all up.

"Q. Will you explain a little more fully and precisely what you mean by that? A. It is not all covered, only on the top side for rain water. When you wrap it up it is all underneath.

"Q. And that was done in such instances as when the shipper requested it? A. Yes.

"Q. In the absence of such request of the shipper, what is and was the situation? A. Well, it was that we did not cover it up when the shipper did not ask for it, but the last one or two years we mostly cover it up.

* * * *

(927)

Cross examination by Mr. Zisgen:

"Q. Do I understand that since approximately 1953 most of the shipments of bagged naphthalene carried on deck on Holland American Line ships have been covered? A. Yes.

"Q. And that has been true in that period whether the shippers requested it or not? A. The shippers requested us to do it.

"Q. They requested you to do it in some instances? A.

Yes, that started about 5 or 6 years ago. The last time we did it before they asked it.

"Q. So that the last two years even without the shippers' request most of your shipments of naphthalene carried on deck on Holland American Line ships have been covered? A. Yes.

"Q. Has that been limited to the last two years? A. It may be two and a half years, I don't know that so exactly."

• • • •

FEITJOV ANDERSEN, previously sworn, called on behalf of the Petitioner, testified (928) through the interpreter as follows:

Direct examination by Mr. Pyne:

• • • •

(937) • • •

Now, during the voyage after Rotterdam to the United States, was any inspection of any kind made of the cargo on the stowage? A. We saw all the cargo on the deck all the time, and rounds were made on the deck all the time—that is very day.

Q. Who made the inspections? A. The chief officer, and I was also around.

(938)

Q. And what was done on those inspections, how were they inspected? A. We saw that the cargo was good and that the lashings were in good order.

Q. I believe you have already testified, in fact I know you have, to the temperatures recorded in the log book and taken in the shade outside the pilothouse; is that cor-

rect? A. Yes, the temperatures were taken in the shade outside of the wheelhouse.

• • • •

(939) • • •

Q. Coming to the night of the fire, when did you first hear of any fire, and where were you? A. A little while after 11 o'clock at night.

Q. And where were you when you learned of it? A. I was on the way out from my room, my cabin.

Q. Will you explain where your room was with respect to the navigation bridge or wheelhouse? A. My cabin was on the lower bridge underneath the navigating bridge.

Q. I believe that is shown, is it not, Captain, on the ship's plan? Do you want to look at the plan? A. Yes, it is shown on the plan of the ship.

Q. How did you learn of the fire? A. I was advised by the third officer.

Q. And what did you do? (940) A. I ran, together with the third officer, out on the sun deck. I ran out on the lower bridge and from there onto the sun deck, and had a quick look as to where the fire was, and from there I ran up on the bridge, and ordered the man at the helm, at the wheel, to put the helm hard aport.

Q. Captain, you said you went out on the lower bridge. On what level with respect to the deck of your cabin or your quarters is the deck of the lower bridge? It was on the same level.

Q. And this sun deck that you ran out on, where is that, the level of that deck, with respect to the level of the lower bridge? A. The sun deck is a continuation of the lower bridge further aft.

Q. Now, you say you took a look from the sun deck at the fire. Tell us what you then saw. A. I saw a small flame and some dark smoke.

Q. Did you see and could you tell where that smoke and flame were, or were coming from? A. I didn't localize it. I just looked down and ran up on the bridge.

Q. How was the engine telegraph when you got to the (941) bridge? A. Full speed ahead.

Q. And do you know, or can you tell us, what wind there was, if any, and from what direction with respect to the "Black Gull" did it come? A. It was a light wind in on the port bow, about a couple of points.

• • • •

(943) • • •

Q. You were telling us yesterday about the stowage of the naphthalene and you testified that the stowage was examined during the voyage, and you also said that you yourself and the chief officer attended those examinations. I will ask you if you will tell us with respect to those bags of naphthalene as they were stowed what their appearance was, that is, whether they were a solid stow and what they looked like? A. The bags looked as always with naphthalene cargoes as if they had been used before.

Q. That is, speaking of the condition of the bags themselves that you are answering? A. Yes.

Q. Will you describe the appearance of the bags (944) themselves? A. The bags looked as they had looked before, and they appeared to have been exposed to rain and sun, and they were also stained.

Q. Can you tell us whether they were new or old or used bags, or secondhand? A. They looked as if they had been used before.

• • • •

(949) • • •

Q. Except for approving a proposed stowage plan that was shown you, did you have anything further to do with stowage plans? A. All the time during the loading of the

ship I conferred with Captain Hollaar and at such times the stowage plan was always there.

• • • •

(959) • • •

Cross examination by Mr. Longley:

Q. Captain, when you first reached the deck, when you knew there was a fire, you told us you glanced at the area where the fire was burning. (960) A. Yes.

Q. And you found the fire burning on the top of the naphthalene on the port side abreast of No. 4 hatch, did you not? A. Yes.

Q. From that point on, until you were driven from the bridge, you remained on the bridge, did you not? A. No.

Q. What did you do, Captain? A. I was on the bridge, I was on the boat deck and I was on the decks—I was everywhere.

Q. Supervising the fighting of the fire, you mean? A. Yes.

Q. And the efforts to extinguish the fire were directed on the naphthalene, on the port side at No. 4 hatch for the first hour or so, isn't that true? A. Yes.

Q. You yourself did not get down on top of No. 4 hatch at that period, did you? A. Yes, I was down there.

• • • •

(962) • • •

Q. Captain, you took no part yourself in the stowage of this naphthalene either at Antwerp or at Rotterdam, did you? A. I supervised the stowage when I took my rounds on the deck.

• • • •

(963) • • •

Q. Well, all right. Now, after the ship sailed, Captain,

do I understand that you went down and carefully examined this stow of naphthalene eight or ten times a day, or what did you do? A. No.

Q. Well, what did you do about examining it? A. I had my rounds on the deck every now and then.

Q. What does that mean, "every now and then"? A. That may mean once a day or once every other day.

Q. What was there about this naphthalene that (964) disturbed you, that caused you to make any particular examination of it, Captain? A. There was nothing frightening me, but I always have my rounds like that.

Q. Well, isn't it the truth of the situation, Captain, that as you walked over this ship you glanced at this stow, and that is all you ever did about it? A. We see a lot when we take our rounds. They are not just glances.

Q. Did you get up on top of this stow and put your hands down between the bags to see that there were no crevices there, Captain? A. No.

• • • •

(965) • • •

Q. You spoke during the course of stowage of comparing with somebody, but I did not get the name. That was Captain Hollaar, was it not? A. Yes.

Q. And it was Captain Hollaar who laid out the stowage and arranged as to where it was to be stowed? (966) A. With my consent, yes.

Q. And Captain Hollaar is here in the courtroom? A. Yes.

Q. Now you have told us that in your opinion it was impossible to comply with the United States Coast Guard regulations in so far as concerns stowage and carriage of naphthalene. A. No.

Q. You did not say that?

The Interpreter: The answer is No.

Q. Do you mean you did not say that? A. I said that as regards carrying of naphthalene on deck it was impossible.

Q. And you are quite right. Why did you carry it on deck then, Captain? A. Because it is allowed to carry naphthalene on deck.

Q. You have told us that you could not comply with United States Coast Guard regulations in the stowage of naphthalene on deck, and I ask you, as you say you could not comply with the regulations, why did you carry naphthalene on deck at all? A. The Coast Guard regulations apply to all waters.

Mr. Longley: I do not quite follow that answer.

(967)

The Interpreter: I am asking whether he had completed his answer.

The Witness: I will ask to have the question read again.

(Question read.)

Mr. Longley: May we have a recess at this time, and let the witness think that over, your Honor? He seems to want to give it a little thought.

The Court: Ask the witness whether he wants to do that.

The Witness: Yes.

The Court: The court will take a short recess.

(Short recess.)

Q. Captain, are you now ready to give your answer to the last question I put to you? Do you remember what it is? A. Yes.

Q. All right, let us have it. A. The Coast Guard regulations, as I said, apply to all waters, and the regulation about sun roof will have to be complied with in the het

regions, but in the North Atlantic we do not have such temperatures.

• • • •

(969) • • •

Q. You knew, did you not, Captain, that if tarpaulins were used in connection with the stowage of naphthalene that they would become impregnated with the odor of naphthalene? A. Yes, with the odor of naphthalene.

Q. And therefore the tarpaulins could never be (970) used again except in relation to naphthalene; isn't that so? A. Yes.

Q. And you had received instructions from Black Diamond in connection with the care to be used in connection with rope slings that had been used over a stow of naphthalene; isn't that true? A. Yes.

Q. And that was because the rope slings would become impregnated with the odor of naphthalene when used over the stow? A. Also because these nets were particularly for the use of naphthalene stows.

Q. And you received directions not to use dunnage wood under a deck load of naphthalene because the dunnage wood would become impregnated with the odor of naphthalene, isn't that true? A. I want the question again.

Q. (Question read.) A. Not particularly.

Q. Isn't there a letter there that deals with that, Captain, or is that the letter you did not receive? I am referring to this letter dated May 29, 1951, from Black Diamond Steamship Corporation addressed to all masters, deck officers, domestic and foreign agents, a part (932) of Libelants' Exhibit 38. Didn't you receive a copy of that letter, Captain? A. (Without interpreter) Yes, I did.

Q. And in that letter from the Black Diamond you were told not to place dunnage on the main deck prior to loading on deck naphthalene; isn't that true? A. (Without interpreter) Yes.

Q. And you were directed to stow it directly on the deck; isn't that true? A. Yes.

Q. Then you were told after the discharge of naphthalene all the dunnage is to be collected and set aside on the deck, secured, and later disposed of? A. Yes.

Q. You knew the purpose of that direction, did you not, Captain, is because the dunnage would become impregnated with the odor of naphthalene? A. That was one of the reasons.

Q. What is the other reason? A. The other reason was that naphthalene is stowed as well on the deck as on dunnage wood, if not better.

Q. The Coast Guard regulations, Captain, provide that naphthalene if stowed on deck may be stowed on deck under cover or on deck protected. You knew (972) that, did you not? A. I knew that naphthalene should be stowed on deck protected.

Q. Didn't you also know that the regulations permitted you to stow it on deck under cover? A. By reading the rules you will find that naphthalene shall be protected, not covered.

Q. No, I am not talking about that now, Captain. I say it provides that it may be put under cover, but in any event you had no means on the "Black Gull" of stowing the amount of naphthalene you were carrying under any superstructure; isn't that true? A. We had no superstructure of that kind.

Q. And of course you could not stow it in the forecastle? A. No.

Q. Or in the bridge house, or the poop, or a deck house? A. We had no such places.

Q. So the only thing you could do was to carry it on deck? A. Yes.

Q. Out in the open? A. Yes.

Q. Now you say it is impossible to comply with the

Coast Guard rules. Reading from the Coast Guard rules, 146.03-34 (b):

> "On deck protected means the articles may be stowed on the open weather deck of a vessel. (973) It is required that dangerous cargoes stowed under such conditions shall be protected from the elements by structural erections or from the direct rays of the sun by means of awnings or dunnage."
>
> Do you read English enough to follow that, Captain?
>
> (Interpreted to witness.)

Q. (Continued) I also call to your attention, Captain, provisions of 146.27-6, reading:

> "Protection for On Deck Stowage. Hazardous articles that are permitted stowage on deck in open or on deck protected, may be protected by the use of structural erections, awnings or tarpaulins."
>
> The Interpreter: We have no real equivalent to your word "hazardous."
>
> Mr. Longley: Dangerous.
>
> The Interpreter: No.
>
> Mr. Longley: Use the word "hazardous" then.
>
> (Interpreted to the witness.)

(974)

Q. You have told us that no effort was made to cover the naphthalene on the deck of the "Black Gull" with tarpaulins. A. Yes.

Q. And you have also told us that——

Do you want to add something, Captain? A. Yes. The Coast Guard regulations also say that naphthalene should be well-ventilated, and it cannot be well-ventilated if it carried under cover.

Fritjof Anderson—for Petitioner—Cross

Q. Well, that doesn't particularly answer my question, Captain, but I may tell you that I find nothing in the Coast Guard regulations providing what you have just said, but they will speak for themselves.

Mr. Longley: (To the interpreter) Will you put my question?

(The interpreter speaks to the witness.)

Q. You have also told us, Captain, that on the mast-house you had a stow of drums of chemicals that you did protect by a tarpaulin.

* * * *

(975) * * *

Q. And you told us that those drums were protected by tarpaulins. A. Yes.

Q. And those tarpaulins were lashed to stay in place, over the drums, were they not? A. Yes.

Q. Why couldn't tarpaulins be lashed over the naphthalene, Captain? A. They could have been lashed, but as I told you before, there would have been no ventilation.

Q. Indeed you lashed tarpaulins over naphthalene at times, you have told us, Captain? A. Yes.

Q. And you did that because you said one or two of the shippers asked for it? A. Yes.

Q. What did you do about ventilating that naphthalene that was covered with tarpaulins lashed down over it? A. The tarpaulin was put on top hanging down from (976) the sides.

Q. You mean it wasn't lashed? A. It was lashed.

Q. That tarpaulin was not carried off in any bad weather, was it, Captain, when you carried it over the forward deck? A. Yes.

Q. The tarpaulin was carried away? A. It was blown up, or torn up.

Q. That naphthalene, I think you told us before—and you will correct me if I am wrong—when you carried it, you carried it on the forward deck? A. Yes, it was carried on the forward deck. It was small parcels.

• • • •

---

(979) • • •

HARVEY LYNGAAS, called as a witness on behalf of the Petitioner, having been first duly sworn through the interpreter, testified as follows:

Direct examination by Mr. Pyne:

Q. Mr. Lyngaas, what is your occupation? A. Chief officer.

Q. Of what vessel? A. The "Black Eagle."

Q. That vessel is in the Black Diamond Corporation service? A. Yes.

Q. And you were formerly a member of the crew of the "Black Gull"? A. Yes.

Q. In what capacity? A. I signed on as third mate.

Q. When did you sign on? A. In February, 1949.

Q. Did you remain an officer on the "Black Gull" from then down til the time of the fire in July 1952? A. Yes.

Q. Before going on the "Black Gull" did you serve on any other vessels in Black Diamond service? A. No.

Q. While on the "Black Gull" did you always remain third officer? A. I was promoted in August 1949 to second officer and again to chief officer in 1951.

Q. Do you remember what part of 1951 you became chief officer? A. In April 1951.

Q. And you remained chief officer, then, on the "Black Gull" until the July 1952 fire? A. Yes.

• • • •

(982) • • •

Q. Now, during the voyage of the "Black Gull" on which this fire occurred, did you make any inspection or inspections of the cargo, and particularly the deck cargo? A. Yes.

Q. Now, would you tell us what inspection or inspections you made, when you made them and what you did? A. I had one proper inspection round, only concerned with inspecting the cargo every day.

Q. And on that inspection would you tell us what you did in the way of inspection? A. I checked the nets, I checked the lashings by means of which the yacht had been lashed, I check (983) the scuppers—I went along the bulwark and inspected the scuppers.

• • • •

(991) • • •

Q. On this plan I am going to point out to you a structure which is shown on the forward part of the (992) weather deck. Was that structure on the "Black Gull" on this voyage? A. No.

Q. I will ask you if you will, so we can later identify it, to take this blue pencil and mark that structure that we are now talking about. A. (Witness marks "X" with blue pencil.)

Mr. Pyne: May I offer the diagram as an exhibit, your Honor.

(Marked Petitioner's Exhibit Z in evidence.)

• • • •

(993) • • •

Q. With respect to the condition of the bags in which the naphthalene was on the deck, will you describe the

appearance and condition of those bags as you saw them? A. They were stained and they were second-hand bags.

• • • •

(995)

Q. And where were you when you first learned or heard of the fire? A. I was asleep.

Q. How did you learn of it and what did you do? A. One of the stewardesses who was in the bathroom in the after part of the midship house on the boat deck had discovered the fire and she came and woke me up and told me there was a fire.

Q. Where were you asleep? A. In my sleeping cabin which is in the midship building on the boat deck, on the starboard side in the fore part.

Q. And when you were awakened, where did you go, what did you do? A. I ran across the alleyway and out onto the boat deck on the port side and out on the deck. From there I went on to the bitt and on to the stow.

• • • •

(997)

Q. On that occasion that you got on top of the stow, will you describe what you saw? A. I saw there was a fire in some of the bags, aproximately in the middle of the stow, about abreast or a little forward of the center of hatch No. 4.

Q. Now at that time did you see either the side of the stow, either the side near the hatch coaming or the side near the bulwarks? A. No, not then.

Q. Well, tell us what you did from that point on. A. As soon as I had got onto the stow, the crew were coming from the poop, from the poop house. I told them to connect the hoses on the deck and one was to run down into the engine room and order water and good pressure.

Q. That is, you ordered that man to do that? A. (In English) Yes.

Q. What then did you do, where did you go? A. I then ran back onto the boat deck, took out the hoses that are stored in the cupboard on the port side, connected those, and in a moment I was about to connect water with that.

Q. What occurred then? What did you do, where did you go? A. I took the hose down from the boat deck (998) and on to the weather deck, when I then came down in the front of the stow, at the front of the stow I could see this side of the stow and I could then see that it was burning, I think it was in the third bag from the top.

Q. Now on the top of the stow over that place where you say the third bag from the top was burning, what was the condition of the top of the stow?

The Interpreter: May I please have that question read?

(Question read.)

(The witness speaks to interpreter.)

The Interpreter: The answer is "No," but I suppose it is difficult——

Q. Let me ask the question again.

You state that when you got down onto the weather deck you then had a view of the side of the stow, is that correct? A. Yes.

Q. Which side of the stow did you then see? A. The side abreast of No. 4 hatch.

Q. And with respect to that side what did you see? A. It was burning in the third bag from the top. There was no fire in the bags above but then up to the top of the stow.

(999)

Q. Were you present when the starboard lifeboat was launched? A. Yes, sir.

Q. About how long would you say it was after you first heard of the fire that the starboard lifeboat was launched? A. Approximately half an hour.

Q. During the preceding half hour did you see the conditions on deck in the vicinity of the lifeboat? A. Yes, there were plenty of smoke and fog and I think that the port lifeboat came on fire about ten minutes after we had discovered the fire.

• • • •

(1004) • • •

Cross examination by Mr. Longley:

• • • •

(1005) • • •

Q. When you first went on deck and discovered the fire you had four hoses playing on the area where the fire was burning, did you not? A. Yes.

Q. And you also used fire extinguishers? A. Yes.

Q. At the time the area of burning on the top of the stow was some three feet in diameter, was it not? A. On the top, yes.

Q. And in spi' of all of the efforts which you and your men directed, the fire spread through the stow with great rapidity, did it not? A. Yes.

Q. Eventually the naphthalene melted and a molten river of fire flowed over the after deck, did it not? A. Yes.

• • • •

(1006) • • •

Q. Had the speed with which this fire spread surprised you, Chief? A. Yes.

Q. You had received no warning, then, as to the great danger which the carriage of this cargo presented? A. No, I cannot say we considered it a great danger.

Harvey Lyngaas—for Petitioner—Cross

Q. And you had received no warning of danger from anyone from on shore? A. When I first started carrying this material back in 1949, I had a conversation with Captain Hollaar, but I cannot remember that it has been said that it was very dangerous.

• • • •

(1007) • • •

Q. That isn't quite accurate, is it? Didn't you sometimes cover the naphthalene when it was stowed forward, that is, covered with tarpaulins?

The Interpreter: May I have the question again, please?

(Question read)

A. We had one instance—it was a small cargo of 40 tons stowed on both sides of the foredeck, and those parcels were covered.

Q. They were covered with tarpaulins which were lashed down over the stow? A. Yes.

Q. And that stow that you covered the tarpaulins (1008) with was on the forward deck at the bow, isn't that so? A. No, it was right in the—it was on each side of No. 3 hatch.

Q. On the forward deck? A. On the forward deck.

Q. You had no trouble in bringing that cargo forward to New York, did you? A. Yes.

Q. What was the trouble? A. We didn't manage to keep the tarpaulins over the stow.

Q. "We didn't"?

The Interpreter: "We didn't manage."

Q. On this voyage of the "Black Gull" you had the tarpaulins lashed over some drums of chemicals on the after deck, did you not? A. Yes.

• • • • •

(1016) • • •

Q. Chief, I will ask you if you did not give this testimony which I point out to you in this transcript (handing to witness).

(Witness examines)

Mr. Longley: While he is reading that, I will read you the translation, if your Honor please, which Mr. Rein has agreed is a proper translation.

"When the accident occurred the witness came on deck as soon as the alarm signal had been given, and he then saw fire and smoke approximately in the middle of the surface on the stow of naphthalene which was placed against the bulwark and had a width of about 17 feet. From this point the fire spread quickly."

A. Yes.

Q. Nowhere in the testimony at Oslo did you say anything whatever about seeing flames on the third (1017) tier of bags down from the top next to the No. 4 hatch, did you? A. No.

Q. What you said, which you have just read there, is what the situation was on this ship, isn't that so? A. This is what I saw when I came on the deck.

Q. And what you saw was a flame burning approximately in the middle of the top of the stow and you saw that flame spread quickly from the point where you first saw it, and that is all you ever did see, isn't it?

The Interpreter: May I have the question again?
(Question read)

A. No.

Q. Why did you give the testimony you did at Oslo, Chief? A. What is here referred to is what I said about

what I saw when I first came onto the deck afterwards—I had the hoses connected and when I had come down on the hatch, I saw it burning on the side.

Q. But you never told the Norwegian investigating officer who was interrogating you anything about that, did you? (1018) A. As far as I remember, there was no question about it. I was asked what I saw at the moment when I came on deck.

Q. Then you and the master and the second officer prepared a report about the fire, didn't you? A. Yes.

Q. There is nothing in that statement prepared by the master, you and the second officer that gives any information whatever about what you now say you saw when you had the hose, is there? A. Yes, but this is not detailed testimony.

Q. What is that? A. This is not detailed testimony.

Q. This is the statement which you, the master and the second officer prepared, isn't it—a report, I should say? A. Yes.

Q. And you were required by Norwegian law to prepare that report and give to the investigating officer, were you not? A. No, the captain has to make a report and I have to countersign it.

Q. You have to what?

(Answer read)

(1019)

Q. Well, this is the report which you did countersign, isn't it? A. Yes.

• • • •

(1020) • • •

Q. Chief, you commented that the bags of naphthalene stowed on the "Black Gull" were secondhand bags and showed stains on the exterior. A. Yes.

Q. The stains were oil stains, were they not? A. They were tarlike stains from the naphthalene.

Q. Let me see. Raw naphthalene—I guess the term is "crude"—crude naphthalene has a lot of creosote in it, isn't that so, or don't you know? A. I dare not have any opinion on that.

Q. In any event, the stains you saw on the bags you knew came from the naphthalene? A. Yes, it has been like that on all cargoes we have had.

Q. And you put your hands on the stains and found them sticky, is that what you mean when you say (1021) it was a tarry substance? A. No, I smelt it.

Q. Smelled the stains, you mean? A. Yes.

Q. And those bags with the tarry stains on the exterior were that way when the bags were stowed at Antwerp and Rotterdam, isn't that so?

The Interpreter: May I have the question, please?

(Question read)

A. Not all of them.

Q. How many? How big a percentage? A. I cannot tell.

Q. Well, I won't try to stick you down to the percentage, but did most of them have the stains? A. Yes, of the ones I saw on the top of the stow, I should say that about 50 per cent had such stains.

Q. That did not come as a surprise to you because most of the naphthalene you had carried on prior voyages had similar stains, is that what you mean to tell us? A. Yes.

Q. You had met Captain Hollaar, did you not? A. On this voyage?

(1022)

Q. Yes, on this voyage. A. Yes.

Q. He was on board at the time the stowage was going forward, both at Antwerp and at Rotterdam, isn't that true? A. Yes.

Q. And you and the captain went over the layout of stowage with Captain Hollaar, did you not? A. Yes.

Q. And Captain Hollaar was on board after the cargo of naphthalene had been stowed and made fast with the rope slings, isn't that true? A. Yes.

Q. This naphthalene gave off a strong odor, did it not, as the vessel lay both at Rotterdam and at Antwerp? A. Yes.

Q. And that odor continued, of course, throughout the voyage, did it not? A. Yes.

• • • •

(1040) • • •

MARION W. LOUSE, called as a witness on behalf of the Respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. Stonebridge:

Q. I believe, Captain, that as of January 1, 1956, you had been retired from Black Diamond Steamship Corporation, is that correct? A. That is right.

Q. Prior to your retirement, Captain, in what (1041) capacities and from what dates did you serve with Black Diamond Steamship Corporation? A. I joined the Black Diamond Steamship Corporation in 1924, January, as chief officer, and served until December 1924 as chief officer, at which time I was promoted to master on December 2, 1924, remaining in that capacity until March 30, 1932, at which time I was given a shore position as of April 1, 1932, to June 8, 1934, at which time I was again put on a ship as master at my request, on June 9,

1934, and remained in such capacity until March 18, 1938, at which time I was again given a shore position on March 19, 1938, to March 30, 1941.

April 1, 1941, I again went to sea as master, remaining in that position until May 6, 1942, at which time I went in the United States Navy from May 8, 1942, to June 3, 1946; at that time, being released from active duty, I again joined the Black Diamond Lines on June 15, 1946, to December 31, 1955.

Q. What was the last active position you held with Black Diamond? A. Operating manager.

Q. And how long did you hold that position, Captain? A. Nine and a half years.

• • • •

(1050) • • •

Q. Captain, what in your opinion today is the proper method of stowing crude naphthalene? A. The method that we are presently using in the Black Diamond and that we have been using in the Black Diamond over all these years in my opinion is the proper and safe manner in which this cargo should be carried.

Q. Why do you not think that crude naphthalene on deck should be covered with tarpaulin? A. So that the gases given off by the naphthalene will not be confined to the stow of naphthalene.

Q. Why do you believe the cargo should not be protected from the sun's rays by an awning? A. There again you would be harboring, enclosing the vapors arising from the naphthalene, which is going on all the time.

Q. Do you think, Captain, that an awning would be a practical erection over deck cargo on vessels engaged in the North Atlantic trades? (1051) A. No.

Q. What do you think would happen to the awning? A. I don't think it would survive the voyage. I am sure; it would be very doubtful.

Q. Why do you not recommend the erection of such dunnage or ceiling sun shed over the commodity? A. That would not be advisable, for the fact that if you encounter heavy weather, which you can expect almost on every North Atlantic crossing, it would become dislocated and it would become a serious hazard, floating around the deck, with the hatches, the various pipes and vents coming up through the main deck or weather deck, if some of these be open, flooding cargo compartments, and other damage naturally resulting from a lot of dunnage and wood floating around on deck.

Q. Captain, are you and were you in 1952 familiar with the United States Coast Guard regulations with respect to the stowage of crude naphthalene? A. Yes.

Q. How is crude naphthalene classified by the United States Coast Guard? A. As a hazardous article.

• • • •

(1063) • • •

Q. Since 1952 has there been any change in Coast Guard's attitude towards the carriage of crude naphthalene on Black Diamond vessels? A. Yes.

Q. Will you explain to the Court what that change has been? A. The change has been in this: At Norfolk, Virginia, vessels arriving at Norfolk with naphthalene on deck for another port, say Baltimore or Philadelphia or another port beyond Norfolk, that naphthalene they (1064) have required us to cover with a tarpaulin.

Q. Commencing at about what time, datewise, was that request of Coast Guard made? A. Well, I would say the last part of 1953.

Q. Has there been any other change in Coast Guard's attitude other than at Norfolk? A. Yes, the same thing has been at Baltimore and at Philadelphia, and very recently at Boston.

Marion W. Lohse—for Respondents—Direct

Q. Has there been any request by Coast Guard in New York for you to change your method of stow? A. No.

Q. Now, Captain, will you describe——

The Court: Just a second.

By the Court:

Q. Where naphthalene is destined for Norfolk or Baltimore or Philadelphia, or Boston, on deck, is it required that it be covered with a tarpaulin? A. By the New York authorities, do you mean?

Q. No, no, by the Coast Guard authorities in each of those ports, or is it only where it is bound for an outport? A. It is only where it is bound for a proceeding port or the next port.

I might add to that, your Honor, that the (1065) naphthalene is for the port which it is consigned to as the first cargo discharged from the ship—so the covering, if it was on there, you would have to take it off to discharge it

Q. But you are not required as you are bringing that cargo into Norfolk to bring it in covered? A. If it was to remain on the vessel, sir, it would have to be covered.

• • • •

(1066) • • •

Cross examination by Mr. Longley:

• • • •

(1070) • • •

Q. Didn't you tell us that in your opinion (1071) that it was improper to put a cover over a deck stow of naphthalene? A. I don't think I used the word "improper."

Q. No, that word is mine. A. I don't think I intended that. What I intended was I didn't think it was advisable.

Marion W. Lohse—for Respondents—Cross

Q. And you thought it was inadvisable, as I understood you, because of a possible accumulation of gases, isn't that the situation? A. That's right, yes, sir.

Q. You know, do you not, that Black Diamond ships sometimes in fact did cover deck loads of tarpaulins—with tarpaulins—deckloads of naphthalene, I mean, with tarpaulins? A. Not deck loads, no.

Q. I don't mean a whole deck load but part of naphthalene on the deck—you know—sometimes was covered with tarpaulins? A. I think it was on one or two occasions.

Q. Wasn't the same danger presented there as that you are not telling us about? A. No, because the amount of naphthalene involved which was covered was entirely of such a small amount that I don't think you had the same problem.

(1072)

Q. The regulation we are talking about calls for a covering of naphthalene by a deck erection, by dunnage or by a tarpaulin; you are familiar with that, are you not? A. Yes.

Mr. Pyne: I object to that question, your Honor. There is no "cover" in those regulations.

Mr. Longley: Well, I don't care what you call it.

Q. You are familiar with the regulation we are talking about. A. Yes.

Q. There is nothing in any regulation of which you are aware, is there, that requires a tarpaulin to completely surround a stow of naphthalene so that there would be no ventilation? A. There is none of the regulations of the Coast Guard which clearly define what you are trying to ask me now, whether or not it is completely wrapped up or enveloped in a tarpaulin.

Q. If you put a tarpaulin over the top of a stow of

naphthalene, in what way does that impede the ventilation? A. It is bound to because the gases can't rise. Further than that, you wouldn't have proper ventilation (1073) or circulation.

Q. Well, I asked you about impeding the ventilation because the gases can't rise, you say? A. And you would cut the circulation of air or wind about it.

Q. There is nothing to prevent you, is there, to so stow the cargo that the gases could escape at the side and still have a cover over the top? A. We have it stowed so that the gases can escape at the side and the top.

Q. How? A. The naphthalene is stowed free of the bulwark, free of the hatch and free at each end.

Q. Then a tarpaulin over the top doesn't particularly impede the escape of gases, does it? A. Yes, it does.

Q. You just told us, as I understood you, that there is a method for gases to escape at the side. A. Some.

Q. And of course you can have as much—you can afford as much facility as you want for the escape of gases by leaving apertures through the stow, isn't that so? A. No, that is not so.

Q. Well, on your ships where you carried naphthalene (1074) on deck, you left a space in the bottom tier, didn't you? A. Yes.

Q. There is no reason why you can't leave spaces in other tiers if you want to, is there? A. Yes, there is a reason.

Q. What is it? A. I don't think the stow would remain—I don't think you could transport it safely. I think the stow would collapse on you.

Q. You don't think that a stow of bagged cargo can be so prepared that there is a ventilation through the mass of the stow, is that what you are telling us? A. Not a bagged cargo, but this particular cargo.

Q. Well, what is different in this bagged cargo from any other bagged cargo? A. Well, it's—it's this different,

that it is stowed away from bulkheads, it has no support on the sides or on the ends, and the compactness of the stow has got to be made within the goods itself.

Q. Well, Captain, you are stowing cargo all the time in masses and providing ventilation through the center, isn't that true? A. Some cargoes.

Q. You can do it, if you want to, with any cargo, can't you? (1075) A. I don't know whether you could or not.

Q. Now, you tell us that you have been to sea so many years, going through the grades up to master and you have been operations manager.

I ask you, Captain, don't you know of your own experience on innumerable occasions where bagged cargo has been so stowed that you have afforded ventilation through the mass of the stow? A. I have never experienced that type of bagged cargo.

Q. Never experienced what? A. The carriage of the type of bagged cargo that you have in mind.

Q. I am talking about any bagged cargo. A. You asked me if I had ever carried any.

Q. No, I didn't ask you if you carried any. I asked you if you had experienced— A. No.

Q. —either as master or since you have been ashore? A. No.

Q. Well, you certainly are familiar with the fact that there are ample facilities of stowing any mass of cargo so that there may be ventilation afforded in the interior of that mass, aren't you? (1075a) A. Yes.

• • • •

(1079) • • •

Q. In one of your letters here—or what do you call these, memoranda—this one dated September 14, 1951, the last paper in this exhibit, Libelants' Exhibit 38, you speak of rope slings (handing). You remember that, don't you,

Captain? You read that this morning. A. Yes, I read it, but I am looking for "rope slings."

Q. Isn't that the one that refers to it? A. I don't think so.

Q. I may have gotten the wrong one. Isn't this it right here (indicating)? A. Manilla net.

Q. Manilla net. A. Not slings.

Q. Apparently I have used the wrong word. What is the distinction between them, rope slings that are used to discharge cargo, and what is the manilla net? A. It is a large net made of manilla rope.

Q. And the spaces between the pieces of it are how wide? A. The mesh between six and ten inches.

Q. It was a manilla net with mesh of that size that was provided by the Black Diamond vessels in connection with the stowage of naphthalene on deck? (1080) A. Yes.

Q. And that was provided according to your letter to hold the stow fast on deck; is that true? A. Yes.

Q. Is there any practical reason, Captain, that you can tell us, why that manilla net would not also hold the tarpaulin fast over the top of the stow of tarpaulin? A. No.

Q. You expressed the opinion, Captain, as I understood you, that it is not practical to protect this naphthalene carried on the deck of a Black Diamond vessel by awnings or dunnage. A. Yes.

Q. I didn't quite understand why you thought it was impractical. A. Well, it is impractical due to the trade, the North Atlantic, the type of weather encountered.

Q. You mean the force of the wind? A. I mean the wind and the sea.

(1081)

Q. A July passage is normally a very smooth passage, is it not? A. It is the best month of the year, possibly—June, July.

Q. And the after deck of a vessel is the deck that receives the least effect of wind and sea, isn't that so? A. No.

Q. Is it not so? A. No.

Q. You think you get more wind and sea aft than you do forward, Captain? A. It depends on the wind and sea, the direction you are going in.

Q. Well, I said "normally," and I am now referring to a voyage from Europe to the United States. A. Yes.

Q. Now, let us see what your answer "yes" is to. A. Well, on a voyage from Europe to the United States it would be the least exposed to head winds.

Q. That is, the after deck would be? A. Yes.

Q. And least exposed to seas, too, isn't that so? A. Yes.

Q. I understood you to say that in your opinion this cargo of napthalene should not be protected from (1082) the rays of the sun—or am I wrong in my statement? A. I didn't say that it should not be protected from the rays of the sun. I was speaking of the North Atlantic trade.

Q. Well, I am talking— A. The trade we are in.

Q. Yes, the North Atlantic trade from Europe to the United States carrying crude naphthalene on deck. A. The temperatures from the rays of the sun in the North Atlantic trade could not be expected to reach the proportions of which it would become dangerous or hazardous alone—the effects of the sun alone.

In other words, you do not have that kind of temperature.

Q. You know that even at a cool temperature crude naphthalene throws off a very heavy odor, do you not? A. Yes.

Q. That would be true on a winter voyage, isn't that so? A. No.

Q. You don't think there would be any odor in a winter voyage? A. Very little because it becomes frozen.

Q. Well, I didn't know that.

In any event, the warmer the weather the more (1083) the odor from this commodity, isn't that true? A. Yes.

Q. And you know the odor comes from gases escaping from the cargo, do you not? A. Yes.

Q. You told us that you knew of no serious fire in naphthalene prior to that of the "Black Gull." Is that a fair statement of your testimony? A. Yes.

Q. You did know of the fire on the "Norwalk Victory" at Rotterdam, did you not? A. Yes.

Q. What did you understand—or I had better ask you this: How did you learn of that fire? A. By cable dispatches from Europe.

Q. You received a cable from your Rotterdam agent advising you that fire had broken out in naphthalene on the deck of the "Norwalk Victory"? A. Yes.

Q. And did you afterwards get a report dealing with that fire? A. Yes.

Q. And you knew fire broke out in a sling load of naphthalene being stowed on that vessel? A. Yes.

Q. And you know that the fire from that slingload (1084) spread to the deck cargo of naphthalene on that vessel, did you not? A. Yes.

• • • •

(1085) • • •

Recross examination by Mr. Longley:

(1086)

Q. Captain, don't you know that the gases of this cargo are heavier than air so that they sink to the bottom rather than rise? A. I know that they are heavier than air and I also know that they will rise.

• • • •

(1087) • • •

Hubert Hollaar, previously sworn, called as a witness on behalf of the respondents, testified as follows:

Direct examination by Mr. Stonebridge:

• • • •

(1089) • • •

Q. Now, in your examination before trial taken by Mr. Zisgen in Rotterdam, you testified that during your employment with Black Diamond, eliminating the war years, there were approximately 800 to 1200 sailings of Black Diamond vessels from Rotterdam and Antwerp to the United States, and that somewheres between 45 and 60 per cent of those vessels carried crude naphthalene always on deck and always uncovered; is that correct? A. That is in summary correct, but I have in the meantime alerted by something that the master of the "Black Gull" has said here, detected that I had omitted to state that there were two instances where we covered a lot of naphthalene on deck of our vessels on the insistence of the shippers.

• • • •

(1102) • • •

Q. I believe you have already testified, Captain, that you are familiar and were in 1953 familiar with the Coast Guard regulations regarding the stowage of crude naphthalene. A. That is correct.

Q. How do the Coast Guard regulations classify crude naphthalene? A. As a hazardous cargo.

• • • •

(1113)

Cross examination by Mr. Longley:

• • • •

(1129) • • •

Q. Now these nets you told us were made of manilla, were they not? A. Yes.

Q. Of course they did not protect the naphthalene from the rays of the sun, did they? A. No.

Q. Nor did they protect the naphthalene from contact with any matches or burning cigars or burning cigarettes or sparks from the funnel, if any should have been blown aft on top of the cargo? A. No.

• • • •

(1130) • • •

Q. There are enough apertures or spaces between the bags in the stow so that the gases from this ventilation in your opinion can be pulled up to the surface by the action of wind blowing over the top? A. Yes.

Q. And that is true, in your opinion, even though these gases that come from this commodity are heavier than air? A. Yes.

• • • •

(1131) • • •

Q. And then you referred to the United States Coast Guard Regulations that you had, and you knew in 1952 the provisions of those Coast Guard regulations, so far as concerns the covering of naphthalene when stowed on deck in burlap bags—you knew that, did you not?

(1132) A. Yes.

• • • •

(1143) • • •

Q. Captain, we come down to this, I think; In 1952 when the "Black Gull" was stowed you knew it was hazardous cargo? A. Yes.

(1144)

Q. And you knew that under the Coast Guard regulations of the United States if carried on deck it must be under cover or protected by awnings or tarpaulins? A. I knew that the Coast Guard regulation read that way.

Q. You knew that the naphthalene on the "Black Gull" was not so covered? A. Yes.

Q. You knew it remained uncovered during the whole voyage from Antwerp and Rotterdam over to the Port of New York? A. Yes, I know that.

Q. You knew that you had booked and there were stowed on the "Black Gull" a very large cargo of valuable merchandise that had been stowed at Hamburg and Bremen, Antwerp and Rotterdam under deck? A. I did not book it but I knew we carried it.

Q. You knew it was a valuable cargo, worth something like $3 million, didn't you? A. That I had no idea.

Q. I won't pin you down, but you knew that it was a highly valuable cargo? A. Yes.

Q. You knew that the Black Diamond had entered into a contract to carry all of this cargo from these (1145) ports of loading to the United States ports? A. Yes.

Q. Those being New York, Philadelphia and Boston? A. Yes, sir.

Q. And you knew that naphthalene was inflammable? A. Yes.

Q. You knew that if a spark from the funnel or a burning cigarette or a burning cigar reached the naphthalene on the deck as you had it stowed there was great danger of fire? A. I don't think so, sir.

Q. You did not think it would ignite? A. No.

Q. You thought that there was no danger whatever of fire if a cigarette were thrown on top of the stow? A. Yes, that is my belief.

Q. And that belief was based on what, Captain? A. That belief was based on the fact that in the North Atlantic crossing it is to be expected that you will encounter rain, spray, sea, fog, various reasons whereby the jute bags would become moist, wet, I would even say, and that even a spark or a burning butt of a cigarette would not entail the danger to which you are referring.

(1146)

Q. Let us assume that did not occur but your bags of burlap are not wet by rain or seas. Under those circumstances didn't you know that there was great danger of fire if a cigarette or a match or a spark reached it? A. Even that is an impression I did not have.

Q. You mean an opinion you did not have?

The Court: Impression.

A. Impression.

Q. Impression, I beg your pardon. A. That I did not have.

Q. You thought then there was no danger of fire in it at all? A. I knew that the flashpoint of the naphthalene was put at 78 to 80 degrees centigrade and that this temperature would not be reached.

Q. By what? A. By a spark or cigarette. It would burn out, or die out, before that temperature would be reached, to such an extent that it would set the stow on fire.

Q. What do you understand is the temperature of a burning cigarette or a burning cigar? A. I am not a chemist, but I will try to answer your question. I will say that the burning cigarette will certainly have a temper-

ature higher than that, (1147) but there is not enough caloric heat I will say in this little object to set such a stow on fire.

Q. But you tell us you would expect gases— A. Yes.

Q. —to come up through the crevices in the stow; and you knew, did you not, that those gases were inflammable? A. At a certain temperature.

Q. You knew, did you not, that temperature would be reached by a cigarette or any other open flame such as a burning cigarette, burning cigar or match reaching the gas? A. I answered you yesterday that the purpose of not covering was to make sure that the gases would not be there, that they would be blown away.

Q. In any event, it was your opinion that there was no danger whatever to this deck cargo of naphthalene stowed as it was, from any outside flame that was liable to reach it during the course of the voyage; is that a fair statement of your opinion? A. Any normal outside flame. Of course, if somebody went with a torch——

Q. I think I said "normally to be expected." A. Yes, that is my opinion.

• • • •

(1150) • • •

Q. Now, you told us yesterday that there was no Dutch regulation dealing with the stowage of naphthalene. A. Yes.

Q. In 1952 or prior thereto you had never consulted with any Dutch lawyer about it, had you? A. No.

Q. You had never taken it up with the Dutch officials, requesting whether or not there were any regulations dealing with the stowage of naphthalene? (1151) A. That isn't quite right.

Q. Well, tell us what is right. A. We have to give a list of cargo to the harbormaster again in Rotterdam, and if there is anything—a list of dangerous cargoes and if

there is anything where the harbormaster has special rulings, then he will let us know.

Q. The harbormaster has jurisdiction in relation to the safety of the Port of Rotterdam? A. Yes.

Q. Isn't that the extent of his jurisdiction? A. That is what I understand it to be.

Q. In giving your list of commodities to the harbormaster, did you in this case, or other cases, put down "We are stowing so many tons of naphthalene on the deck of the 'Black Gull', or some other ship, and we are not covering the naphthalene, and how about it?" A. No, sir, of course not. We do not indicate the manner of stowage.

Q. Then you never did inquire of any Dutch official in 1952, or prior thereto, in relation to any regulation dealing with naphthalene? A. No.

• • • •

(1153)• • •

Q. You told us you made no inquiry about it in 1952. In 1954, you did, didn't you? A. Yes.

Q. And you did that for the purposes of this case, did you not? A. Yes.

Q. Because of the destruction of the "Black Gull"? A. Yes.

Q. Now, I have in my hand Petitioner's Exhibit W, which is a letter from the Shipping Inspector of the Second District addressed to Van Nievelt Goudriaan & Company, dated May 3, 1954.

You are familiar with that letter, are you not? A. No, sir, I am not familiar with the letter. (1154) I have heard of its existence but actually that letter was not addressed to me but to our agents.

• • • •

(1156) • • •

Q. You are the man who has complete authority so far as concerns the stowage of Black Diamond ships? A. Yes.

Q. And this letter that you have now read, you say you heard about— A. Yes.

Q. —a short time after it was received, after its date? A. Yes.

Q. And you knew that it dealt with the views of the Shipping Inspector of the Ministry of Shipping of Holland, in relation to the stowage of naphthalene? A. Yes.

Q. And yet you never read the letter? A. No.

Q. Well, why is that, Captain? (1157) A. Because I am still of the opinion that there was no such regulation in force, and now that I have read the letter I only find that my opinion is confirmed in the letter.

Q. Well, I don't quite understand what that has to do with why you didn't read the letter, Captain.

I asked you why you, knowing of this letter and knowing that you were in complete authority over the stowage of Black Diamond ships, that you never read the letter. Were you trying to avoid it? A. I was not. My opinion on the stowage of naphthalene I had from years of experience established, and I knew that there might be people having a different opinion but there was no rule or law or regulation which they could 'ay before me showing that I was breaking that.

Q. Well, are we to understand, then, that holding the position you did, and knowing that you were stowing naphthalene in Rotterdam on various vessels of Black Diamond, you had no interest in the views of the Dutch Government as to its proper stowage? A. This is not the Dutch Government, where this letter comes from.

Q. It is the Shipping Inspector of the Second (1158) District of the Dutch Government, is it not? A. Yes, and it is his personal opinion.

Q. His personal opinion as Shipping Inspector of the Second District? A. Yes.

Q. And in this letter—I am leaving that for the moment— you were told the contents of this letter, were you not? A. Yes.

Q. And you knew then, in this letter dated May 3, 1954, that this Shipping Inspector of the Second District for the Government of Holland, told you or whoever read the letter, that this cargo, that is, naphthalene, "will generate inflammable vapors if only slightly heated."

You learned that, did you not? A. Oh, I knew that before.

Q. Yes, and he expresses the opinion that that is the reason why this substance easily ignites. You knew that before, too, didn't you? A. Well, there is where I differ with him.

Q. You don't think it does easily ignite? A. No.

Q. You knew perhaps about this letter telling you that crude naphthalene contains a lot of creosote? (1159) A. I did, yes.

Q. And you know the bags are stained with the creosote from crude naphthalene? A. I have often seen it, yes.

Q. Indeed, the naphthalene stowed on Black Diamond ships before the voyage of the "Black Gull" was nearly always stained with creosote from the contents? A. It was.

Q. And that is true of the naphthalene stowed on the "Black Gull", is it not? A. As I recall; I have no reason to think it was different, but it is so long ago.

Q. In other words, it always is that way, isn't that what it amounts to? A. Practically, yes.

Q. I think you told us that in Rotterdam this commodity comes down the rivers in barges. A. Mostly, yes.

Q. Mostly. You said sometimes it comes in rail cars. A. Yes.

Q. And of course it is stowed in the barges a certain number of tiers high. A. Yes.

Q. And the weight of the cargo on top will squeeze the creosote in the burlap at the bottom; (1160) isn't that true? A. I believe that squeezing isn't even so necessary. The goods in itself are apt to stain the bags.

Q. In any event, you knew that the burlap of the bags was usually—and in the case of the "Black Gull", in fact, was impregnated with the creosote oil from the product. A. Yes.

Q. You knew that this Inspector said in his letter "These impurities"—referring to the impurities of crude naphthalene—"are liquids a.. l during prolonged transport may be absorbed by the fabric of the bags, making them more inflammable."

Didn't you know that? A. I know that he says that but in that respect I do not quite agree with this gentleman.

Q. You don't think that the burlap bag being impregnated with this oil becomes more inflammable? A. I am of the opinion that mineral oils—and that is what I have always learned—I am not pretending to be a chemist—that mineral oils in this respect are not dangerous, that it is more the vegetable oils which constitute the danger in that respect.

Q. You hold the view, then, that a rag impregnated (1161) with kerosene presents no danger? A. Yes, it does because the kerosene is a very volatile oil.

Q. Let it be lubricating oil. A. That contains a certain lubricating effect and I would also consider that as something on which I would have to guard against.

Q. But you don't think that creosote oil presents any danger? A. Not so great a danger, no. I have never seen any one of these bags just burst in flame for no cause, when they were stowed on the dock.

Q. No one is suggesting any spontaneous combustion, Captain. I said they became more inflammable.

Now, you disagree with what this Inspector says in that regard? A. Well, I disagree in this respect with him—I would not enter into the merits of the danger but that they became highly dangerous I disagree.

Q. He says, going on—quoting——

> "Naturally covering will diminish the risk of ignition from the outside."

You knew he said that in this letter, didn't you? A. Yes.

(1162)

Q. And then he adds at the end of the letter—near the end:

> "I incline to the view that ignition from outside is the greatest danger during carriage of naphthalene, so that in case of carriage on deck it is better to cover the cargo."

You knew that was in the letter? A. That's his privilege to hold that opinion. Mine was different.

Q. And then he enclosed a copy of this and I will now read the last paragraph of this letter:

> "I am enclosing a copy of the regulations concerning naphthalene included in the handbook 'Dangerous Cargoes', which is going to be published."

And then you learned that enclosed with this letter were these regulations, didn't you? A. Yes.

Q. And you knew, did you not, that these regulations particularly provide that naphthalene, if stowed on deck, must be protected from the sun's rays? A. I know they contain that, yes.

Q. And yet with all this you tell us that in the (1163) face of what your own Government has told you, you continue to stow naphthalene on deck unprotected? A. I beg to differ, an opinion—my Government hasn't told me that. This book has never been published not until today.

• • • •

Hubert Hollaar—for Respondents—By the Court

(1168) • • •

By the Court:

Q. Captain Hollaar, in your opinion would it have (1169) been dangerous to cover the stow with a tarpaulin on top? A. Your Honor, it would not have been exactly perhaps dangerous, but it would have been less advantageous. That is what I have been trying to explain. The gases I see as the danger, and if I can only get rid of the gases, as I said yesterday, no gas, no fire—ventilation.

Q. You feel that the effect of the wind in removing gases would not have been sufficient if while the top of the stow was covered the sides were left open? A. That is it, your Honor.

Q. Will you explain a little further how the gas would be dangerous if the stow were covered with tarpaulins? A. Your Honor, this gas is supposed to have a flash point of 70 to 80° C., this gas being heavier than air, would stay in any small pocket which would be in the stow, and if the gases could not be taken away then gradually of course the gas of the naphthalene being the heavier in comparison to air, it would replace whatever air spaces there are left in the stow, and consequently in that covered stow we would finally have naphthalene gas. It would take quite a while to take that gas out by diffusion, but in my opinion new formed gas would accumulate more rapidly if this existing quantity of gas is not helped by the (1170) maximum of ventilation to be carried off.

Q. Do you contemplate the possibility that the flash point of that gas will be reached simply by the heat of the sun in a covered stow? A. No, sir; I do not think it would be reached by the heat of the sun only, because seeing the temperatures, the prevailing temperatures across the North Atlantic Ocean, I could not say that we would reach that point. But that might, of course, be done from an outside source, providing that source carried enough caloric heat with it to cause it.

Hubert Hollaar—for Respondents—By the Court

Q. What outside source would you have in mind? A. Well, sir, there may be people who are perhaps not overcautious at a certain time during the voyage. They may be having an open flame some place, without of course being authorized to have that; but anyway, if they were working around the decks, I could imagine that such a thing would happen. The best of precautions on the part of the officers sometimes cannot overcome the stupidity of others. So if there are no gases, there could be no harm done.

Q. Do you think if somebody was using a blow torch there it would be more likely to ignite the stow if there were a tarpaulin over it than if it were open? A. Yes.

(1171)

Q. Would there really be any difference, if anybody had a flame as powerful as that? A. Well, sir, it is hard to say. That would depend upon the time he would be with that blow torch in the neighborhood of the stow.

Q. But if the outside source of ignition were a cigar stub or cigarette stub, or a spark from the funnel, it would be much less likely to ignite the stow if covered by a tarpaulin than if the flame were against the stow; isn't that true? A. Perhaps so, yes, your Honor.

• • • •

(1172) • • •

Q. Assuming that a tarpaulin was put under the manilla net, would that tarpaulin be any less secure than the tarpaulin that was put over the drums of vinol cyanide? A. No, your Honor, it would not, but at the same time we would not be doing what the Coast Guard requires from us.

Q. No, but let us leave that for a moment. In what way would that means of coverage differ from the way you covered the vinol cyanide with tarpaulin? A. Your Honor, as I have said, it is my firm belief that we should have

the maximum of ventilation, and also thereby surface ventilation of the stow. If we put a tarpaulin under a net, then of course we include the surface ventilation, although the tarpaulin itself would be held down by the net.

Q. I was not going into the question of ventilation, but simply the question of the feasibility of maintaining the cover during the voyage. What is the difference between the means you had for securing the tarpaulin over the drums of vinol cyanide and this method which was suggested of putting a tarpaulin under the manilla net? A. Under the manilla net I must say there would be chance for the tarpaulin to survive.

* * * *

(1174) * * *

Recross examination by Mr. Longley:

Q. Captain, are you seriously telling us as an experienced mariner that a tarpaulin is as readily ignitible as a burlap bag? A. If it was impregnated with naphthalene, I do not see any difference.

Q. A tarpaulin is made of a very heavy duck, is it not? A. All depending, sir.

Q. The tarpaulins that were used on your ships? A. Yes.

Q. There is such a heavy duck that you could not bend it very readily with your hand, isn't that so? A. No, sir.

Q. It is a very heavy material in any event, isn't it? A. It is heavy, yes, but so are the bur- (1175) lap bags used for naphthalene.

Q. And then you have impregnated your tarpaulins with a waterproofing material? A. There are tarpaulins not that way, impregnated, and they are both admissible on board ships.

Hubert Hollaar—for Respondents—Re-cross

Q. Don't let us fence with each other, Captain. The tarpaulins you used on your ships, on the Black Diamond ships, were impregnated with a material to make them watertight, weren't they? A. Yes.

• • • •

(1189) • • •

SVEND A. TANG, called as a witness on behalf of the respondents, being first duly sworn, testified as follows:

Direct examination by Mr. Stonebridge:

Q. Captain Tang, by whom are you employed? A. Isbrandtsen Steamship Company.

Q. In what capacity? A. As general superintendent in charge of terminal operations and line operations.

• • • •

(1190) • • •

Q. Do you know anything about the characteris- (1191) ties of crude naphthalene, Captain? A. Yes, it is a coal tar product, flash point about 125, melting point about 160, volatile and inflammable.

Q. Are you familiar with the United States Coast Guard regulations with respect to the stowage of crude naphthalene? A. Yes.

• • • •

(1194) • • •

Cross examination by Mr. Longley:

• • • •

(1195) • • •

Q. First, you know now and you have known during your time with Isbrandtsen, that naphthalene has the

characteristics set out in the Coast Guard regulations—and I show them to you (handing to witness).

Will you read them over, if you will? A. (After examining) Yes, yes.

Q. And it is described first as a strong coal tar odor—you know that is true? A. That is correct.

Q. That it is readily ignited by sparks—you know that is so, is it not? A. That is, the gases.

(1196)

Q. Well, whatever it is. A. Yes.

Q. Whether it be the gases that emanate from the stuff, you know is readily ignitible by sparks? A. Yes.

Q. "Gives off heavy dense smoke when burning and will add materially to a fire." You recognize that as so? A. Yes.

Q. "—will evolve inflammable vapors at or below its melting point." You recognize that is true, is it not? A. Correct, but how much below its melting point?

Q. I don't know. A. The flashpoint is 125.

• • • •

(1203) • • •

Naphthalene in itself will not ignite by putting a match to it or a cigarette butt or anything else like that, but gas pockets may, in my opinion, be (1204) ignited by sparks and static or otherwise and would create an additional fire hazard.

By not covering naphthalene we permit such gases to escape, by blowing away as it develops.

Q. Then you do recognize the danger that this is— A. Well——

Q. Wait a minute til I finish the question. —the danger that this might ignite from sparks, this commodity? A. With gas being present amongst the bags, yes.

• • • •

(1176) • • •

A. G. Hagens, called as a witness on behalf of the respondents, being first duly sworn, testified as follows:

Direct examination by Mr. Stonebridge:

• • • •

Q. By who: are you employed? A. At present by Thomsen Stevedoring, Rotterdam.

Q. Exactly what are they, and where do they operate? A. Do you want me to give you the whole picture?

Q. Very briefly. A. Thomsen Stevedoring is principally a stevedoring firm in Rotterdam, though having branches in Hamburg, Antwerp, Amsterdam, in South Africa in Capetown, Port Elizabeth——

Q. I think that is enough, Captain. Please keep your voice up a little bit. A. Louder, do you mean?

Q. Yes, please. Is there any relat onship between the Black Diamond Steamship Corporation and the Thomsen Stevedoring Company? A. Only that Thomsen is the stevedore for the Black Diamond.

• • • •

(1177) • • •

Q. In what capacity have you been serving with Thomsen? A. Well, I am chief inspector of stevedoring.

• • • •

(1179) • • •

Q. Did you make a particular inquiry into naphthalene and its characteristics and the existence or non-existence or regulations concerning its carriage? A. Yes, I did.

Q. Approximately when? A. I did—well, that is, of course, a bit hard to say, sir, after all these years—whether that was right at the time (1180) we started to carry the stuff or whether it was two or three months later, I cannot of course tell you but I can tell you this, that of course

we were in the possession of all works of reference that can be found in any large shipping office, and that covers completely the field.

Apart from that I had received, after the war, new books on the subject—for instance, the Coast Guard regulations which were, of course, of importance to the Holland-America Line going out to the United States principally—I had occasion to—well, I had better not say it like that, but the war, of course, interrupted our trade for a long time and when we started out again after the war it was more or less a hard job to get into our stride again, and of course I knew exactly how we had stowed the naphthalene before the war. I had carried it often enough myself to know that, but when I received the Coast Guard regulations and saw in the book—and if I am right it was the publication of 1941—that the Coast Guard required us to protect the naphthalene when stowed on deck, and looking up the specifications on what "protected" meant, finding out that the Coast Guard wanted us to erect (1181) structures—let us say, put structural erections over naphthalene or protect it from the direct rays of the sun by means of awnings, it struck me as rather strange that this was required now when we had been carrying naphthalene for so long to the United States on so many ships, and I didn't feel so very easy about that because I felt there might be something the matter which I did not know, and since this was going to be my responsibility and since I am not in the habit of taking my responsibilities lightly, I made it a point via our freight department to inquire at a coal tar factory in the neighborhood of Rotterdam—people whom we dealt with, whom we had done business with and whom we knew—what really were the properties of naphthalene, especially whether naphthalene might be more dangerous than I knew about, • • •

• • • •

(1184) • • •

Cross examination by Mr. Longley:

• • • •

(1209) • • •

Q. And you know Mr. Aeby's book recommended, the issue existed in 1952, that naphthalene be stowed under cover; isn't that true? A. I did.

Q. And you said you referred to the Coast Guard regulations? A. I did.

Q. And you know what they recommend? A. I do.

Q. And when after the war you saw the Coast Guard regulations you decided that something new had come into being, is that the idea, as to regulations? A. I noticed then with I got the copy of the United States Coast Guard book that there was a rule introduced then which was in contradiction to the practice which we had followed. I knew of course that before the Coast Guard rule originated there were rules by the Steamboat Inspection, but I was not sure what they were, and I had no copy of them.

Q. So you made the investigation you referred to, of going up to some factory and finding it was highly in-
(1210) flammable, this material? A. I beg your pardon, I could not state that because that was ruled out.

Q. What was ruled out? A. The fact that I went to a factory for that information, sir.

Q. It was not ruled out that you went to the factory. What was ruled out was something was told to you. A. Well, I am prepared to state that I went to a factory.

Q. And thereafter you were satisfied that on the ships that you stowed that were going to the United States you would stow naphthalene on deck uncovered? A. To what period are you referring yet?

Q. Up to date. A. Up to date; yes, sir.

Q. And you told us as I understood you that you

thought it should be uncovered because of an accumulation of gases— A. I did.

Q. That might occur, were uncovered. A. Yes, sir.

Q. What was going to ignite the gases? A. Open fire.

Q. What kind of open fire? A. I would not be in a position to tell you, sir.

• • • •

(1231) • • •

MERLE ALLEN, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

Direct examination by Mr. Stonebridge:

Q. Captain Allen, by whom are you employed? A. I am self-employed as a marine surveyor.

Q. How long have you been in that occupation? A. I have been as a marine surveyor since 1947.

• • • •

(1234) • • •

Q. Have you ever as a marine surveyor, surveyed shipments of crude naphthalene? A. Yes, I have carried out a considerable number of surveys on crude naphthalene.

Q. Approximately how many would you say? A. Roughly I would say between thirty and forty, perhaps forty-five.

Q. And where were those surveys conducted, on shore or on ship? A. The majority of them, I would say about ninety per cent of them, were carried on on board vessel while it was in stow.

• • • •

(1235) • • •

Q. Did you notice how the cargoes of crude naphthalene were stowed on those vessels? A. Yes, sir, I did.

Merle Allen—for Respondents—Direct

Q. Would you please describe it, how the cargo was stowed—how and where? A. I have found approximately four different arrangements of stow, and they are as follows:

• • • •

The Witness: Number 1: I found them to be stowed on the open deck with a dunnage flooring and to a (1236) height of approximately six to eight tiers high, with a cribbed arrangement around the sides, and with rope lacing over the top.

Number 2: I found them to be stowed without any cribbing on the sides and with rope nets and save-alls over the top and the sides of it.

Number 3: I found it to be stowed without any protection on the sides except some rope nets and over the top a scattered cross-plank dunnage.

Number 4: I found it to be stowed six to eight or possibly ten tiers high with a tarpaulin over the top and some dunnage separations on the side.

• • • •

(1248)

Cross examination by Mr. Longley:

• • • •

Q. Well, isn't it true that you have surveyed the cargo for the United States Lines? A. Yes, sir, that is so.

Q. And isn't it true that you surveyed naphthalene carried on United States Lines? A. Yes, sir, one of several.

• • • •

(1249) • • •

Q. Isn't it true that the United States Lines carries naphthalene on deck covered with tarpaulins? A. On occasions.

• • • •

Q. Well, in any event, you have been on board United States Lines ships in the Port of New York and found that the deck load of naphthalene was covered with tarpaulins, haven't you? A. Yes, sir.

• • • •

(1254) • • •

Q. Do you know what the flashpoint of a gas from naphthalene is? A. I know approximately, yes.

Q. What do you think it is? A. I think it ranges between 172 and 180.

Q. What do you think, then, could possibly ignite these gases that you refer to? A. Well, I should say that there are many things that could actually ignite them if the conditions were ripe.

I am not a chemist; I am not sure what explosive gases and what combinations would cause an explosion, but there are people working on deck, the vessel's cargo is all the time working.

Q. Yes. A. There is a possibility, I think, of people going over it, of friction, of spark.

Q. Friction of sparks? A. I said friction or sparks.

Q. "or sparks," I beg your pardon. Friction of what? (1255) A. Well, there are many times chafing of metal parts.

Q. Do you think that a spark perhaps coming from the friction of metal parts might set it off? A. I think there is a possibility. I am not that much of a chemist to know but I think——

Q. Do you think a spark from the funnel might set it off? A. From what I know about sparks from funnels, I don't believe it is quite hot enough, but then again I am not a chemist and I say again there is a possibility.

• • • •

Merle Allen—for Respondents—Cross

Q. Well, now, tell me on what lines that you have seen the stowage of naphthalene covered with tarpaulins? A. I don't believe that those—I represent various principals and various steamship companies in the Port of New York and although I can answer that question, I don't believe that I should.

(1256)

Q. You don't believe that you should tell us what lines you are talking about that carried their naphthalene covered with tarpaulins? A. I don't think that their names should be bandied around. It has no direct connection with their interest.

Q. Well, you have already told us that the United States Lines— A. No, you mentioned that.

Q. I told you and you agreed. A. You mentioned that and I agreed. I didn't mention any name at all.

Q. Well, you have known other lines, without naming them? A. Yes.

Q. Where you found that the naphthalene was covered with tarpaulins? A. Yes, sir.

Q. How many other lines have you found? A. Only one.

Q. Is that a United States flag line? A. Yes.

Q. So you have the United States Lines and this other United States flag line were carrying naphthalene improperly stowed, do you? (1257) A. In my opinion of proper stowage, yes, I consider it improper. There is certainly nothing in the regulations which refers to tarpaulins.

• • • •

(1263)

ALVIN C. PURDY, called as a witness on behalf of the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. Stonebridge:

Q. Dr. Purdy, by whom are you employed? A. I am employed by the firm of Bull & Roberts, Incorporated, consulting chemists.

Q. And in what capacity are you in their employ? A. As president.

• • • •

(1265)

Q. Doctor, did you at my request collect bags of crude naphthalene from a vessel called the "Black Falcon" in New York Harbor in January, 1956? A. Yes, as instructed, I boarded the "Black Falcon" at the Black Diamond piers at the foot of Court Street, I think, Brooklyn, and in company with their representative inspected the stow on deck and selected one bag in the second tier down from the top, on the starboard side, alongside the No. 4 hatch. With the assistance of the stevedores it was removed from the stow. That bag was of Belgian origin bearing the marks "C. N. S."

Then going a little farther aft, we selected a bag of French origin having the trade name "Chematar," and then we selected a third bag which on inspection bore the information "Made in West Germany." But the three or four initials of the trade name were indistinct, so we can refer to that perhaps as the West German product.

Those three bags were removed to the pier, put on a Bull & Roberts truck, and I came back on the truck to our laboratory. We removed about twenty pounds of naphthalene from each of the bags and disposed of the rest, because we could not very well handle six hundred pounds in the laboratory.

(1266)

We emptied the bags and took the bags up to the laboratory and carefully inspected them, and we detected that on the reverse side of the bags all of them were obviously or had been, sugar bags. They bore various marks. In each case part of the mark was "Product of Cuba," and the other mark was a central—do you want to have those?

Q. If you have them. A. Yes. The CNS bag bore the number 3382 on the naphthalene marked side. On the reverse side it was marked "Central."

The next word was illegible, and then, "Product of Cuba." The Chematar bag——

> Mr. Longley: I must confess, if your Honor pleases, that I am mystified by all this and how it is relevant to this case—how some bags were marked that came over here on a ship that arrived a few weeks ago or a few days ago. I think I will object to it because it just seems to me a waste of your Honor's time.
>
> The Court: I assume that it is going to have some bearing, so I will take it.
>
> Mr. Stonebridge: It will.

A. (Continuing) The Chematar bags were marked on the other side "General Sugar Central Vertientes (1267) Produce of Cuba," and bore a number, and the German bag was marked on the reverse side, "Central Moron Product of Cuba."

Q. Doctor, did you at our request conduct certain tests of these naphthalene bags which you received from the "Black Falcon"? A. Yes, we did. We determined the melting point of each of the samples. We determined the flash point of each of the samples. We conducted some tests relative to possible ignition under various conditions.

We ran three tests on the bagging material for spontaneous combustion, using both the standard Mackey procedure and the U. S. Coast Guard modification of the Mackey procedure. We also determined the amount of oil in the CNS product which visually, being dark brown, was assumed to be the most crude of the three. That was also indicated by a somewhat lower melting point.

• • • •

(1270) • • •

Q. It is a fact, is it not, that naphthalene will emanate gases or vapors even at a temperature below its flash point? A. Yes.

• • • •

(1277) • • •

Q. Have you carried out experiments with the bags you selected from the "Black Falcon" in order to determine whether or not a burning cigarette placed on a burlap bag would cause a fire? A. Yes, we carried out a series of experiments. Actually we had encountered an article which appeared in the quarterly of the National Fire Protection Association in January. Listening to Dr. Snell's testimony, I know he referred to the same article. In that article it had some official background apparently, because it was written by the State Fire Marshal and the chemist of the office of the California State Fire Marshal, and they carried out a series of experiments first determining the temperature of a burning cigarette, the center of the cigarette and the outside of the cigarette, and when an artificial draft was drawn through the cigarette to simulate one being smoked; and they arrived at various maximum temperatures which you would get in a cigarette under those conditions. They then carried out a series of experiments in which they described how they took swatches (1277a) of fabrics and held them in slight tension, and then laid cigarettes on top to see if the fab-

ric would ignite, and thinking that that was an interesting technique and applicable to our problem, we did exactly the same thing with pieces of bagging cut from the Chematar bags and from the CNS bag. We did it both with stained pieces of burlap and with unstained pieces of burlap.

(1278)

Q. All of the pieces, however, came from—— A. Oh, yes, they were from the bags and I brought those pieces up, if the Court——

Q. Would you please show them to us and describe them? A. A piece cut from the CNS bag, a stained section, a cigarette was placed on that after we lit it, took a couple of puffs and put it on the bag—I have the time of ignition.

(After examining) The bag first started to glow as a visible flame after about one-third of the cigarette had burned. The glowing continued for an additional 17 minutes and the fabric was destroyed beyond the outline of the cigarette. This is that—that was pretty well attacked beyond that (indicating).

Now, a similar unstained sample from the same bag glowed for about 13 minutes after half the cigarette had been consumed. In other words, the oil from the naphthalene did make the bagging more inflammable and it ignited—it took 13 minutes and half the cigarette burned and it continued to glow and it destroyed the fabric beyond the outline of the cigarette—which is this one (indicating).

The Court: It ignited in 13 minutes and
(1279) glowed for 13 more?
The Witness: Yes.

A. (Continuing) Now, we had a third sample cut from a stained section of the bag, and this was placed so that its

lower surface was in intimate contact with naphthalene from the same bag.

In other words, on the procedure described in the article, both sides of the fabric were exposed to air.

In this case this was a highly stained section of the bag and the cigarette was placed on it and the cigarette burned completely but the bagging at no time glowed and there was only slight charring in the area of the cigarette.

In other words, the presence of naphthalene under the burlap greatly retarded—in fact at no time did this piece glow; it merely charred.

Q. That third sample, as I understand your explanation, was placed firmly on top of a pile of naphthalene? A. That is right. It wasn't pressed down; merely the pile of naphthalene was flattened and this was laid right on it.

Q. And the lit cigarette was placed directly there? (1280) A. That's right—and the same procedure was used in the case of the Chematar bagging and that was stained with naphthalene and there there was more—we did get a slight glow at the end of 23 minutes, and the charring extended beyond—that one was pretty well charred.

The Court: It glowed after 23 minutes?

The Witness: Yes.

• • • •

(1282) • • •

Q. Now, is pure naphthalene susceptible of self-heating? A. From a chemical standpoint I wouldn't feel that it was and I did search the literature for some 25 years and found no reference to spontaneous heating of pure naphthalene.

Q. How about crude naphthalene? (1283) A. With crude naphthalene, because of the nature of the impuri-

ties, I don't think that you can be quite as certain of naphthalene as derived from a distillation of coal tar in which relatively high heat is applied. You may get some unstable side reactions. There is a possibility that you might have impurities in crude naphthalene which would be subject to self-heating.

Q. Have you carried out experiments with the burlap bagging which you received from the "Black Falcon" in order to determine whether or not it is susceptible to self-heating? A. Yes, we carried out three experiments. We ran two experiments on the CNS bagging. Now, there is and has been for many years a standard procedure for testing for spontaneous combustion known as the Mackey test. The Mackey test apparatus is quite simple. What it involves is a cylindrical chamber, air chamber surrounded by a water chamber.

Into the air chamber there are two tubes—vents. One goes to the bottom of this air chamber; the other taps off at the top—the purpose being to provide a little air circulation in this interior chamber.

(1284)

Then in the center of the chamber there is a cylindrical wire basket in which the material to be tested is to be placed. In the classic Mackey procedure, you put the material to be tested in this chamber after you had gotten the water up to the boiling point in the outside chamber. Then there was a thermometer inserted into the center of the material being tested in the wire cylinder and if the temperature rose above 100 centigrade in one hour, or above 200 centigrade in two hours, I think it was—that was the original criterion in the Mackey procedure of possible danger from spontaneous heating—in other words, your material was never subjected to a temperature higher than the temperature of the water, 212 or 100 centigrade, and actually your temperature in the air chamber with

the circulation usually runs about 5 degrees centigrade below that, unless there is evidence of self-heating.

Now, more recently the Coast Guard developed a test procedure which is a modification of the Mackey. It uses the same apparatus but they have a procedure specifically applied to fabrics, in which they cut a piece of fabric—it is two or two and a half inches wide, roll it up and put it in (1285) the center chamber, after your water bath has come to 100 centrigrade, and then they follow the temperature for four hours.

Now, if in that period of heating the temperature of the material being tested has a temperature rise of over 5 degrees centigrade, they then assume the possibility of spontaneous combustion and would question whether material so tested could be used as ships' stores.

Q. Doctor, when you say a rise of over 5 degrees you mean a rise to over 105 degrees centigrade? A. That is right. In other words, to get back to centigrade again, your water bath would be 100, and if you got a temperature of over 105 in your material being tested, they would then very much question whether that material could safely be used as ships' stores; so with pieces cut from CNS bagging—that was the most highly stained and contained the least pure of the crude naphthalenes—we ran two tests, one by the Mackey procedure and one by the modification of the Coast Guard procedure.

In both cases we did get heating. We got a temperature, a maximum temperature of about 103½. Now, that is below—we got 103 and in the straight (1286) Mackey we got 101.5.

Now, those two definitely showed some self-heating. The fact that they did show some self heating leads us to believe that the possibility of spontaneous combustion cannot be eliminated in the case of the carriage of crude naphthalene in secondhand bags which at some time had obviously contained sugar and might have contained

other commodities between the carriage of sugar and the carriage of naphthalene.

We did also test a sample cut from the Chematar bagging and in that case we got no evidence of heating at all.

In other words, there was no evidence of self-heating in the Chemitar bagging but in two tests run under two different procedures, we did get evidence of some self-heating in the CNS bagging.

Q. If the self-heating was due to impurities, how would that process develop during the course of an ocean voyage in a stow of bags? A. Well, it would tend to develop towards the center of the stow. In other words, there is a certain optimum ventilation conditions, you might say, for spontaneous combustion—you have to have (1287) enough oxygen to permit your heating, which is an oxidation of the action to take place, but you don't want so much ventilation that it removes the heat as formed.

All types of spontaneous combustion are clear at some point, not necessarily in the center but sub-surface, whether it is a stack of hay or a pile of coal.

Q. Would it, in your opinion, be possible during such a process to obtain a temperature at which naphthalene could be ignited without any outside source of heat? A. Well, our experiments on the small sample merely showed some heating tendency. Now, whether under optimum conditions of insulation and of slight ventilation that process could have been carried to the point of ignition, we can't say.

* * * *

(1288) * * *

Q. Doctor, aboard the M/V "Black Gull" in July 1952, on the port side of the after deck, we had bags of naphthalene stowed approximately 6 feet high from a point beginning just inboard of the bulwarks to a point about 3 feet from the hatch coaming—in effect, an area of some

13 to 16 or possibly 17 feet in width, and extending approximately 100 feet fore and aft.

In your opinion is it possible that a fire could have occurred from self-heating in the bagging of that stow? A. I think it's a possibility. I think that's as far as we can go.

• • • •

(1289) • • •

Q. If you were told by a witness that the first indication of a fire in a stow of bags of naphthalene was a dull bump, with a flame following, would that suggest to you that the cause of the fire might have been self-heating? A. I don't think that that would follow necessarily—it would probably be more the location of the origin of the fire.

• • • •

(1293) • • •

Cross examination by Mr. Longley:

• • • •

(1294) • • •

Q. And the bags that you had before you with which you experimented were bags that you found had been used apparently at some time for the carriage of sugar? A. Because of the markings we assumed that to be true.

Q. That is an assumption because of the markings? A. Yes, sir.

Q. And of course you naturally have no way of telling—I guess you said that—what other cargoes these bags may have carried? A. Yes, that is true.

Q. Of course the bags could be made more or less susceptible to ignition, according to what may have impregnated them; isn't that a fair statement? A. That is true. I would call attention to the fact that washed sugar bags do have a bad reputation for spontaneous ignition.

There is quite a bit of discussion on washed (1295) sugar bags and their hazards in a symposium on spontaneous combustion——

Q. Will you tell us why that is so? A. Why that is so?

Q. Yes. A. No, I can't. Sugar itself is not considered to be—to have a spontaneous combustion hazard. There have been arguments pro and con as to some fires which occurred in the storage of raw sugar, and in the absence of other sources of ignition there have been several that were claimed to be spontaneous combustion but never proved to be.

Q. Then we start in, as I understand you, with the known fact that used sugar bags present a recognized danger of spontaneous ignition. Is that a fair statement? A. Yes, used sugar bags per se.

Q. And in your experiment that you conducted you necessarily were using used sugar bags? A. That's right.

Q. Leaving out used sugar bags, Doctor, have you ever known from your own experience of any spontaneous heating or ignition of burlap bags? A. I have never had any experience that would point that out.

(1296)

Q. And have you ever conducted any experiments of the type that you have explained here which you employed in connection with these used sugar bags to ascertain whether there was any possibility of spontaneous ignition, of burlap bags that had not been used for the carriage of sugar? A. No.

• • • •

(1297)

Q. Do you not agree that your profession recognizes that there is no danger of spontaneous combustion of bags made of jute? A. I would qualify that to the necessity of stipulating the minimum temperature to which the jute is subjected.

Now, as I understand it, the Bureau of Standards has proven that jute does self-heat if you have an initial temperature of—I think it is around 400.

Spontaneous combustion always has to presuppose what the ambient temperature at what you start is.

Q. Well, I don't think I have made my point quite clear, Doctor.

There is a difference between raw jute and a product made out of jute, is there not? A. Yes, I would say that there would be.

Q. The difference is that a jute bag is made of the fibers of jute woven in two directions and creating cells—thousands of them in a bag—isn't that true? A. Yes.

Q. And isn't it true and well recognized in your profession that when you have a bag made of jute (1298) the way I have described, that any possible danger of spontaneous heating of jute, of itself, is not presented in the bag because of the way the heat would be dissipated, because of the weaving of the jute?

Isn't that a recognized statement? A. I don't know of any spontaneous heating that could be attributed to jute bags but I think that in any question of spontaneous heating you are always dealing with the surrounding circumstances of heat, of ventilation, of other commodities which may inter-act with it.

* * * *

(1299) * * *

Q. And you yourself have never known of a case of spontaneous combustion of jute bagging, have you? A. No, I have not.

(1300)

Q Have you ever heard of a fire in burlap bagging which was thought to have resulted from spontaneous ignition? A. This is new burlap bagging?

Q. That is right. A. Not in new burlap bagging, no.

Q. What? A. Not in new, unused burlap bagging.

Q. You have heard of fire which is thought to have resulted from spontaneous combustion of used burlap bagging, have you? A. Yes.

Q. And that resulted from the commodity with which the burlap bagging had become impregnated? A. In the case to which I refer they stated definitely they were used sugar bags.

Q. Well, that was your experiment—is that what you are referring to? A. No, I am referring to statements in a symposium on spontaneous combustion.

Q. I see. A. In which they cited the hazards of used sugar bags.

The Court: Didn't you say first "washed sugar bags"?

(1301)

The Witness: Yes, they are washed.

The Court: Is there any possibility that any foreign agent comes in in the washing?

The Witness: I wouldn't feel so, no, your Honor.

Q. You think it probably is some residue of the sugar that causes this danger but a little bit unknown what the residue is. Is that a fair statement? A. I think that is a very fair statement.

• • • •

(1302) • • •

Q. But in any event, I gather what you told us that the Coast Guard assumes that there is no substantial danger of self-heating if the increase in temperature is under 5 per cent. A. They have set that as an arbitrary limit for ships' stores.

Q. Do you disagree with the Coast Guard? A. Not at all on the matter of the ships' stores, (1303) if that has been their——

Q. Well, what is the distinction between spontaneous combustion in ship's stores or in any product? A. Mr. Longley, here we are dealing with what is really an unknown mixture. We have used bags. We have crude naphthalene. We have a certain type of stow and we have got some self-heating.

Now, the mere rise of 3 degrees indicates that some reaction took place.

Now, if any reaction takes place, any increase in temperature above the water bath temperature takes place, there is an indication of danger which might develop under certain conditions of stow, of ventilation, and so forth, so that I feel that our experiment prevents us from ruling out the possibility—I wouldn't say it was a probability, but I don't think that we can rule out the possibility of self-heating under this combination of circumstances that we have, as indicated by this bag and this naphthalene.

• • • •

(1305) • • •

Q. Haven't you got to assume, then, that the naphthalene carried on the "Black Gull" was c rried in used sugar bags? A. Well, perhaps the assumption is not too far fetched, when we are dealing here with three lots—one coming from Belgium, one from France and one from (1306) West Germany, and all three lots—at least the bags which we took, the single bags from each of the three lots were all sugar bags.

Q. And I think you told us, but I had difficulty hearing you from where I was sitting at the time—when was it that you took these bags? A. That was on January 24th, in the afternoon.

Q. This year— A. Yes.

Q. —1956. And that is all you know about the bags? A. That is right.

Q. You took bags, I think you told us, from a stow, did you not, on a ship? A. Yes.

Q. And I think you explained how you took them. A. Yes, I explained the exact points on that.

Q. And the antecedents of the bags, you are ignorant of that? A. Absolutely.

Q. Except as you saw the markings it appeared to be used sugar bags? A. It is only based on the markings of the two sides of the sugar bags.

Q. A burlap bag, a normal piece of burlap bagging, has a fuzz on it, does it not? (1307) A. Yes.

Q. Don't you recognize, Doctor, that that fuzz in itself is highly ignitable? A. Yes, I think there the best thing is to refer to the actual experiments which we carried out in the samples which we have shown you and shown the Court, and there is no question but that what they did ignite. They didn't flame up; they glowed, and the glow continued—I see your samples are very similar to mine.

Q. I did not know that I had a sample. A. Well, I thought Dr. Snell having read the same article and done the same experiment.

Q. Well, you told us, as I understood it, that you took these pieces of burlap—well, let's see—these were from the bags, were they not? A. Oh, yes.

Q. Used sugar bags. A. Yes.

Q. And stretched over something, isn't that it? A. No, they are stretched—we followed the exact procedure used in this article where they were testing inflammability of fabrics and the actual apparatus is pictured there, and we did the same thing.

Q. Well, I say you stretched it. A. That is right. There is a slight tension due (1308) to the rubber band so that the cigarette would lie flat.

Q. And how big a material was it that you used? A. It was the standard size, which is—I think they give the size here—it is 2½ by 5 offhand, if I remember that.

Q. You mean inches? A. Yes.

Q. And then you put a piece of the burning cigarette in the center of the piece of burlap, stretched as you have mentioned? A. That is right.

Q. And that is true in each case? A. That's right.

Q. It is true, is it not, Doctor, that the burlap is most ignitable where there are corners or edges or knots or ears of the bag? Isn't that so? A. I don't think that is necessarily so. We felt that under the most severe conditions would be to have the bag stretched so that the cigarette was as nearly as possible in contact throughout its whole length so that it heated, that is, every bit of its burning length was in contact with the bag. I would feel that that was a more severe test than if it was lying on a crease or something like that, where part of the cigarette was up in the air and not (1309) flat on the burlap surface.

Q. But what I am visualizing, doctor, you have the ear of the bag—you know, of course, what I mean by the "ear"? A. Yes, yes.

Q. In the ear of the bag or the seam of the bag, there you have rough pieces of material, don't you? A. yes.

Q. Don't you agree, Doctor, that if a cigarette is lying against the seam of a bag or against the ear of a bag, where the burlap, in the course of the manufacture of the bag has become roughened up, that you have much greater fire than where you have it in the middle of a smooth piece of burlap? A. That is assuming that the end of the fire tip comes in contact with that face. Actually you have a pretty fuzzy surface right on the surface of of the bag, and this procedure that we used—and really, the reason we used it was—you might say that perhaps it got away from any subjective treatment of ours.

(1310) We were using a more or less official test procedure for testing the flammability of certain fabrics, so we proceeded along those lines exactly and felt that we were perhaps less open to criticism for not being objective if we followed standard procedure.

Q. Well, I don't think you have answered my question. A. Well, I—that is supposititious. It might and it might not. I mean it is entirely dependent on ventilation conditions and draft going across it or something.

• • • •

(1314) • • •

Q. Then we start in that the naphthalene itself is not susceptible to spontaneous ignition. A. The naphthalene itself.

Q. Now I again say to you, or ask you is a better way of putting it, with the naphthalene bag or bags in a pile, each bag being filled with naphthalene, will you explain to us how the bags could possibly heat spontaneously to the ignition point without the accumulated heat being dissipated in the naphthalene contained in the bags? A. Well, the naphthalene would probably first tend to melt and go into the bags. In the actual Mackey test we have a roll of burlap which is not more than—oh, not much more than about an inch in diameter—so we have not got a very big mass of the burlap there, and we did get some heating.

Q. But you had nothing inside your roller burlap to take away the heat, did you? A. Not more than the small amount of adhering naphthalene that was in the burlap.

Q. I am not going to try to pose as a chemist or an expert in your line, Doctor, but at least as a layman it would appear to me that what I say is neces- (1315) sarily true, and I ask you to explain to me which way I am in error if I suggest to you that you could not possibly have your burlap bag filled with naphthalene, when it is filled

with naphthalene—I mean spontaneously heat to a point where it would ignite? A. Well,——

Q. Because of my suggestion that any heating of the bag is bound to be dissipated in the naphthalene itself? A. Undoubtedly some heat would be carried off, but you have your mass of stow there, and as I have said all we can really talk about is that a piece of burlap taken from one of the bags did show heating.

Now whether or not there was any possibility of that developing spontaneous combustion, we are dealing with a lot of other factors, the stow, the naphthalene and so forth, so I tried to limit the spontaneous combustion, and I did, to a possibility. Because of the heating of the burlap would seem to be some possibility, and I cannot help be influenced by the answers to certain questions relative to where the fire was observed and the dull thud.

Q. Did you conduct any experiment with a burlap bag or several burlap bags filled with naphthalene, (1316) as to the susceptibility of the burlap to spontaneous combustion? A. That of course is quite impossible, and that is one of the most difficult parts of studying any spontaneous combustion problem, that it is wrapped up so much with the size. It has been proved, for instance that wall board imported from Scandinavia will selfheat if you have a big enough mass, but you cannot prove it in the laboratory because you cannot study a big enough mass.

* * * *

(1317) * * *

A. I assume that as a possibility. In other words, if spontaneous combustion is involved it would have to develop in the center—I won't say center, but well within the stow. You could not have spontaneous combustion on the top.

Q. Because the air would take away the accumulating heat? A. That is right.

Q. It has to be in the center where the surrounding cargo so insulates it that the heat cannot be carried away; is that a fair statement? A. Yes. I tried to explain you have to have the ultimate conditions, providing enough oxygen for the occurrence but not enough air to cool the process.

Q. What is the melting point of naphthalene, Doctor? A. It is about 172.

• • • •

(1319) • • •

Q. That is what perplexes me, Doctor. I have heard the term used here, "autogenous." A. Yes.

Q. That is what? It is auto ignition? A. Yes, that means you do not have a fire, a spark, or something like that.

(1320)

Q. You mean the heat of the air or something around. Now what is the autogenous temperature of naphthalene? A. It is of the order I think of 1038. As I have explained, that is determined in a specific type of apparatus.

• • • •

(1322) • • •

Q. I had thought that you could not get this material to ignite unless you had an open flame presented, if the material was giving off gas; at its flash point; isn't that true? A. If you are dealing now out in the air, that is true.

Q. But you think a different situation is presented inside of the stow? A. Very definitely, if the stow has been subjected to this lower temperature over a long period of time, that is the only way that you could possibly have spontaneous combustion of practically any commodity.

• • • •

(1323) • • •

Q. But it is your serious opinion, Doctor, that this commodity inside of this stow could ignite autogenously, that is spontaneously, at a point at or before the melting point? A. Well, at or before the melting point, I have said that you can have sufficient vapor to cause a flash.

Q. Yes, I realize that. A. I would feel that you would undoubtedly have to go somewhat higher than that. But if you exposed this mixture of material for a prolonged period of time at a temperature somewhat elevated above that, and how much I could not possibly say——

Q. You are now speaking of somewhat elevated above melting point? A. Yes. In that particular area, of course. You would not melt the whole stow, you might possibly melt an area in the center.

Q. Suppose you get to the point where the commodity is beyond melting point, it is bound to melt, isn't it? A. It would melt right adjacent to the (1324) surface heat, but that would not spontaneously melt everything beyond that.

Q. Wouldn't just the section that had started melting —wouldn't the melted material necessarily cause a lowering of the temperature of this material which you are assuming was spontaneously heating? A. Locally if it started to sublime you would undoubtedly have some temperature effect to the latent heated supplements.

Q. You will bear with me in my ignorance, Doctor, I am sure, but as I view it in my ignorance, you could not possibly have a heat beyond the melting point without the cargo in contact with that heat melting. Isn't that a fair statement, that it would? A. Yes, locally. Locally you would.

Q. Then if it locally heats, or melts, I mean, the more heat that you have the more melting you are going to have around that area, aren't you? A. That is perfectly

true, in so far as you have good heat conductivity through the naphthalene.

• • • •

(1327) • • •

Q. Is it a fair assumption that this darker material is less refined than the other two? A. I think that is a fair assumption, yes.

Q. Does that mean there is more creosote in it? A. Yes.

Q. Does that mean it is more dangerous? A. Yes.

Q. So far as concerns heat? A. Yes, I would say so.

Q. Is it a fair statement, then, that the more creosote there is in the material the more dangerous it is? A. I think that is a fair statement. You recall in our Mackey test we got heating with that sample and did not get heating from the bag sample from the French.

• • • •

(1330) • • •

Q. Let us deal with this commodity. A. Yes.

Q. This is a pile of naphthalene in burlap bags. A. That is right.

Q. First, at all temperatures it gives off a certain amount of gas, does it not? A. Yes, depending on its vapor pressure at that temperature.

Q. And the higher the temperature to which it is subjected the more the gases thrown off? A. That is right.

• • • •

(1332) • • •

Q. Let us come down to this, Doctor: if you have this commodity in bags, if you apply heat at the top of the stow long enough, you will be able first to bring the commodity to flash point and, second, ignite it; isn't that true? A. If the temperature and the heat energy of the ignition source is sufficient, yes.

Q. There would not be anything autogenous about that? A. No.

Q. And if it starts a fire in the way I have mentioned, you would expect a very hot fire indeed, would you not? A. Yes.

Q. You would expect it to spread throughout this cargo and present the danger that a ship, if it was on a ship, would be consumed? A. No question about it.

Q. In other words, once the fire starts — A. That is right.

Q. The danger of a disaster is pretty terrible, isn't it? A. I think that is a very safe statement, yes.

• • • •

(1333) • • •

Q. If I held the match to the wick, then I have a flame that eventually will consume the candle? A. That is right.

Q. Don't you have exactly the same thing, Doctor, if you have burlap bags over a commodity such as naphthalene? A. Once ignition has taken place, you do, but I showed you this morning what happens when you have a piece of burlap and place it on naphthalene and put a cigarette on top of the burlap.

Q. Doctor, would you have any sense of impending danger if you were on a ship and you saw somebody throw a burning cigarette on top of a pile of naphthalene? A. I would certainly be worried about it, yes.

Q. Why? A. Because under certain conditions you might expect that it would burn.

Q. What conditions? A. If you had sufficient draft you might have it. What impressed me——

Q. Go on from there. A. It is just one of these (1334) dangers you would naturally fear. Just like the sparks flying into gasoline and not igniting, and actually it did not do it when we experimented with it.

Q. Yes, but you agree that if you were on a ship, you and your family, if you will, and saw somebody throw a lighted cigarette on top of a stow of naphthalene, you

would feel worried, wouldn't you? A. I would feel worried to have a cigarette fall on anything that is combustible.

Q. Let us deal with naphthalene. Why would you feel worried? A. The bag is combustible and the naphthalene is combustible.

Q. You might feel worried that you would lose your life, perhaps, Doctor? A. I will include the bags of naphthalene, but actually it was experimentally shown that the naphthalene seems too chilly.

Q. Why would you feel worried under the circumstances? You tell me that you conducted an experiment and there was not any fire; I ask if you would be worried, and you say yes, for fear there might be a fire. I confess I do not understand the two answers. A. I think that is a perfectly normal reaction. If you saw a cigarette fall on any sort of combustible (1335) material you would be worried.

Q. Then you know that burlap bags will cause it? A. Certainly.

Q. You would fear that was danger of fire if a lighted cigarette was thrown on the burlap bags? A. I would think there was a possibility of it.

• • • •

(1337) • • •

Q. In your opinion would that increment due to the sun's temperature be a fair comparison of what you would expect as increment or difference between the shade outside the pilothouse temperature and the temperature of the deck of the steamship in the sun? A. Yes, I think with the temperature in that range in the 80s, you would expect the maximum sun temperature on deck to be about 43 degrees higher.

• • • •

(1341) • • •

By Mr. Longley:

Q. Doctor, the gases of naphthalene are heavier than air, are they not? A. Yes.

• • • •

(1346) • • •

Q. You told us this was a very ignitable cargo once it starts. A. That is a very indefinite term.

Q. It makes a quick fire. A. It is very combustible.

Q. How can you explain, doctor, if you can explain, there was a fire coming out of this third tier of bags in this stow, yet there was no fire from there to the top of the stow? A. I gathered there was evidence of flame coming up through the top.

Q. No, that is not the evidence at all. The (1347) evidence from witnesses is that they saw flame coming out between the second and third tiers on the side, but there was no fire in the bags above that flame on the side of the stow and I ask you, Doctor, if that is not an impossibility? A. No, I don't think so. If the fire started inside of the stow it would spread out between those tiers and up along the same tiers.

Q. What is going to stop it from burning the ends of the bags up to the top, then? A. I presume that it did.

Q. Do you not agree that a steel deck subjected to the temperature of the sun builds up a temperature higher than the temperature of the sun to which it is subjected? A. I don't think it would build up a temperature higher than what is called the black bulb temperature, which is the maximum sun temperature.

Q. I am thinking of experiences that I think we all have had, of a hot summer day and a metal surface getting so hot it burns your hand. That is true, isn't it? A.

Certainly, if it was 40 degrees higher than the shade temperature it would feel pretty hot.

(1348)

Q. If it got to a high temperature like that, and these bags were subjected to that temperature—I think you assume some 116 degrees, do you not? A. Yes.

Q. You would expect those bags of naphthalene to give off a much greater gas than at a lower temperature? A. Naturally, if the vapor pressure is higher at that point, but it still is well below the flash point.

Q. But it is headed toward the flash point; isn't that the situation? A. It is a point on a curve.

Q. So it is much more liable to be brought to the flash point, because it is already toward it; isn't that a fair statement? A. Well, I think it is perfectly fair to say that any initial heating would make it easier to ignite. Any initial heating.

* * * *

(1353) * * *

JOSEPH MAZZOTTA, called as a witness by the libelants in rebuttal, having been first duly sworn, testified as follows:

Direct examination by Mr. Zisgen:

Q. What is your occupation, Commander Mazzotta? A. Commander of the United States Coast Guard

Q. How long have you been in the Coast Guard? A. Thirty years in August—in October, this next October.

Q. Twenty-nine years and something, is that right? A. That is right, 29 years and 4 months.

Q. In July 1952 where were you stationed? A. I was commanding officer of Port Security Unit, Pier 9.

Q. That is Pier 9— A. East River, New York.

Q. New York City? A. That is right.

Q. At that time how long had you held that position? A. Since November 20, 1950.

Q. Now, what did your duties include in that position at that time, speaking very generally? A. My duties generally were to see that the (1354) captain of the port duties—the policies were carried out—the Port Security laws, dangerous cargoes and explosives law were carried out with the forces available.

Q. When you say "dangerous cargoes," what do you refer to? A. I refer to the gray book, what is known as the gray book, CCG-187. It is 46 U. S. Code.

Q. I show you a pamphlet entitled "Explosives and Other Dangerous Articles on Board Vessels." (Handing to witness) Is that the document that you referred to? A. That is correct.

Q. And when you said CCG-187, you referred to this number on the book? A. That is right, commonly known as the gray book in the service—we call that the gray book.

Q. At that time, in July 1952, or prior to that, while you were in command of the Port Security Unit, was it or was it not the practice of the Coast Guard at New York to examine the stowage of either American or foreign vessels arriving at New York Harbor to see if the regulations in this pamphlet were being observed? (1355) A. Will you repeat the first part of the question?

Q. Will you read it, please, Mr. Reporter?

(Question read)

A. It was impossible to examine every vessel. We did examine certain types of vessels. The three categories that were examined were vessels that were carrying military cargo, military assistance cargo and explosives, and vessels tied up to piers which were restricted under the volunteer restricted program at the time.

Q. And with those exceptions, do I understand that it was not a routine practice to examine such stowage? A. It was impossible to examine every vessel as a routine practice.

Q. Why was it impossible, Commander? A. Due to lack of personnel and it was also mandatory that each master, owner and operator comply with the laws. Merely the presence of the Coast Guard aboard did not exempt them from complying with the present laws.

Q. You say that you were at that time commander of the Port Security Unit? A. That is correct.

Q. Under the oast Guard organization in New York (1356) at that time, were there other units also? A. Prior to September 3rd, I believe, of 1951, no, Pier 9 was the only one enforcing—my unit was the only one enforcing the Port Security laws.

Q. Well, were there or were there not other sections or divisions or departments of the Coast Guard doing other types of work? A. Yes, sir—we have a section called the Marine Inspection Personnel. They go aboard vessels to inspect machinery, the hull and life-saving equipment.

Q. Under the Coast Guard organization, as at the time that you were in command of Port Security Unit, did the Port Security Unit rely on the Marine Inspection Unit to enforce the regulations in this pamphlet which I have shown you? A. The Marine Inspection Personnel are not trained in Port Security and the only way they would know that there was a violation, if they knew there was a violation they would report it or somebody would have to call it to their attention. Merely walking on board a ship, they would not know that there was a violation of the Port Security laws.

Q. Well, did you, as commander of the Port Security Unit, look to them to enforce these regulations? (1357) A. No, sir.

Joseph Mazzotta—for Libelants—Rebuttal—Direct

Q. Now, in July 1952 and prior to that time, while you were in command of the Port Security Unit, was there any ruling of any kind which in any way modified the provisions of this pamphlet containing the regulations concerning explosives or other dangerous articles relating to the stowage of naphthalene? A. Not at that time—not that I can recall. There were changes from time to time, amendments made, as the Coast Guard and the Safety Bureau and the underwriters gained experience, they work in conjunction and they write up those laws.

The Coast Guard merely enforces the laws.

Q. But as at the time that you were in command of the Port Security Unit, do you know of any modifications concerning the stowage of naphthalene? A. No, sir, not from that date to this is there any, so far as I know.

Q. During the time when you were in command of the Port Security Unit, did it ever come to your attention that any vessel arriving in New York Harbor had naphthalene stowed on board in violation of these regulations? A. No, sir.

(1358) • • •

Cross examination by Mr. Stonebridge:

• • • •

(1359) • • •

Q. Have you had any practical experience in the stowage of cargoes? (1360) A. Yes, sir. As I previously mentioned, on those ships I served on as cargo officer, I was trained by officers of the U. S. Lines.

Q. I would like to get one further point clear: You indicated that the Coast Guard personnel could go aboard vessels in the Harbor to inspect the hull, the engines, the life-saving equipment—they are not trained specifically in stowage, is that correct? A. No, I said Port Security laws. I did not say "stowage."

Q. In Port Security. A. That is right.

Q. What exactly does Port Security embrace, while we are on that subject? A. Well, it embraces the stowage of explosives and other dangerous cargo as outlined in the gray book—ammunition, water-side facilities, docks and piers, to meet certain requirements, minimum requirements. The gray book are the minimum requirements that are laid down by law.

* * * *

(1367) * * *

CHESTER SNELL, previously sworn, called as a rebuttal witness, testified as follows:

Direct examination by Mr. Longley:

* * * *

(1369) * * *

Q. It has been suggested here by Dr. Purdy if this material in burlap bags was in a stow some 90 or 100 feet long and some 6 feet high and some 13 feet wide, that it is conceivable that the interior of one of the bags—I had better say an interior bag in the stow might become so heated that it would burst into flames spontaneously.

Will you let us have your views about that and explain your views? A. Well, Dr. Purdy testified that in his opinion the autogenous ignition temperature in such a case might be less than that published, but it would be higher than the melting point of naphthalene certainly, so assuming that they were self-heating when the naphthalene reached its melting point, it would melt, requiring a large amount of latent heat (1370) and fusion, which would stop the increase in temperature immediately because until the naphthalene had melted it wouldn't get higher than its metling point, and having melted, by gravity it certainly would flow downward to other bags,

which in turn must melt so that the cargo must collapse upon itself before it reached the temperature that it could possibly ignite, due to the fact that we would have a liquid center which had considerably less volume than the solid from which it came.

Q. Doctor, there is testimony here by one of the witnesses suggesting that a tarpaulin is highly ignitable.

Will you express your views, Doctor, as to the comparable ignitability of a tarpaulin and of a burlap bag containing naphthalene? A. I carried out an experiment similar to the one described by Dr. Purdy, using a tarpaulin, and merely got a scorch spot on the top surface when a cigarette was completely burned in contact with it, whereas, as Dr. Purdy has testified, a burlap bag will catch fire or glow and the cigarette will burn through here.

Q. I do not think Dr. Purdy said that the bag caught (1371) fire in his experiment. He said it glowed.

Now, Doctor, you expressed the view, when I interrogated you before, that if you had a stow of naphthalene of the type I have mentioned, without any cover over it, that if a lighted—that is, a burning cigarette or cigar stub or a burning match were thrown on top of the stow, in your opinion there would be a great danger of fire.

Have you any reason to change that opinion? A. I have not.

Q. What do you visualize now when you give that testimony? A. Well, I realize that experimentally it is very difficult, and I didn't carry out experiments like Dr. Purdy because—well, for one thing, he carried out his experiments in still air whereas we have a ship moving at 16 knots, and stirring up its own breeze so that there would be a wind to blow the ash off and make the tip of the cigarette hotter than it would be in still air, and as any cigarette smoker knows, occasionally you get a flare where there is a spot of nitrate that is not equally distributed, which gives you momentarily a much hotter temperature, so

that there are so many of (1372) these imponderables, that experimentally you might try 99 or 100 times without setting it afire, whereas the hundredth time you might.

Q. The opinion has been expressed here, Doctor, that the fact that the first sign or notice of a fire to the officer on the bridge was a sound which he described as a bump or a dump or something of the kind, and immediately afterwards he found flame on the top of the stow.

What is your opinion as to whether or not the sound, which he described as I have mentioned, is necessarily only a sign of spontaneous ignition of this commodity inside the stow? A. Oh, I think there are other explanations. The fire started with melting naphthalene which would flow into the interstices and might very well cause a minor explosion.

Q. Then am I right when your naphthalene, if a fire started on top of the stow, when the bags and the naphthalene burns, you will find melting almost immediately? A. Yes.

Q. And you would expect the melted naphthalene to flow below, is that what you mean? (1373) A. That is right.

Q. If there are any cracks or crevices between the bags where it can flow below? A. That is right.

Q. You spoke the other day, I think, that a burlap bag in which this naphthalene was carried would act as a wick—that is the term I think you employed.

Would you sort of tell us all about what you had in mind in giving that testimony? A. Well, once the fire started the temperature would be high enough to melt the naphthalene and it would act—the burlap would act just like the wick of a candle to hold the flame. A stow of naphthalene, without the bags, would be much more difficult to ignite and probably not burn quite as fiercely.

* * * *

Chester A. Snell—for Libelants—Rebuttal—Cross

(1374) • • •

Cross examination by Mr. Stonebridge:

Q. Doctor, isn't it true that the word "tarpaulin" is one of rather general or generic scope? A. Well, it refers back to the original method of waterproofing by using tar. Of course, that has not been used for generations, I suppose.

Q. What is used today on various types of tarpaulin? A. Well, the most common thing that is used now is chlorinated paraffin. It serves the purpose of both waterproofing and flameproofing.

• • • •

Libelants' Exhibit 6

Bill of lading covering naphthalene from Rotterdam.

(OFFSETS)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Note

Page 395a (2 sheets)
is on card 15.

Libelants' Exhibit 7

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A 174–34

In the Matter of the Petition of

SKIBS A/S JOLUND

as owner of the M. S. "Black Gull", in a cause of exoneration from and limitation of liability.

A 178–380

MARIA ANGELINA VERBEECK, et al.,

Libellants,

—against—

BLACK DIAMOND STEAMSHIP CORPORATION,

Respondent.

IT IS HEREBY STIPULATED AND AGREED, by and among the proctors for petitioner, the proctors for respondent and the proctors for libellants and claimants Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck as follows:

1. If Ole Torleif Roed of Oslo, Norway were called to testify as a witness on behalf of claimants and libellants he would testify:

(a) That he is a member of the Bar of the Kingdom of Norway, entitled to practice in all of the Courts of that Kingdom.

(b) That under the law of the Kingdom of Norway, Belgian seamen employed on Norwegian ships

are not entitled to the benefits of the Norwegian Workmen's Compensation Statutes nor are their widows, children or other dependents entitled to any benefits thereunder when such seamen are killed in the course of their employment, excepting that such seamen employed on such ships are entitled in case of injury to certain hospital treatment and in case of death to certain costs of burial.

(c) That there is no treaty between the Kingdom of Norway and the Kingdom of Belgium extending the benefits of the Norwegian Workmen's Compensation Statutes to Belgian seamen on Norwegian ships or to their widows, children or dependents.

(d) That under the law of the Kingdom of Norway there exists a right of action in the widow, children and other dependents of a Belgian seaman employed on a Norwegian ship for the death on the high seas of such a seaman negligently caused against the person or persons whose negligence has brought about said death.

(e) That the measure of damages in such an action is the pecuniary loss sustained by those in whom the right of action exists.

(f) That said right of action is created by the Statute, the pertinent portions of which are annexed to the libel herein.

Dated: Oslo, Norway, August 15, 1955.

PYNE LYNCH & SMITH
Proctors for Petitioner

DOW & SYMMERS
Proctors for Respondent

BIGHAM, ENGLAR, JONES & HOUSTON
Proctors for Libellants and Claimants,
Maria Angelina Verbeeck, et al.

ROTTERDAM

BLACK DIAMOND LINES

B/L No. 5

Libelants' Exhibit 6

D 3/748

BLACK DIAMOND STEAMSHIP CORPORATION

39 Broadway - New York 6, N. Y.

ROTTERDAM:	Van Nievelt, Goudriaan & Co., 2 Veerhaven.
AMSTERDAM:	Van Nievelt, Goudriaan & Co., 10a Spui.
NEW YORK:	39 Broadway.
CHICAGO, Ill.:	Messrs. Norton, Lilly & Co., 208 South La Salle Street.
DETROIT, Mich.:	Mr. J. A. Byrnes, 5—252 General Motors Building.
PHILADELPHIA, Pa.:	Messrs. Norton, Lilly & Co., 240 Bourse Building.
PITTSBURGH, Penn.:	Messrs. Lamark Shipping Agency, Henry W. Oliver Building.
PORTLAND, Maine:	Messrs. Peabody & Lane Inc., 57 Exchange Street.
BOSTON, Mass.:	Messrs. Peabody & Lane Inc., 110 State Street.
BALTIMORE, Md.:	Messrs. Norton, Lilly & Co., Court Square Building.
NORFOLK, Va.:	Messrs. Norton, Lilly & Co., Boyster Building.
MONTREAL, Can.:	Messrs. Saguenay Terminals Ltd., 1700 Sun Life Building.

Telegraphic Addresses:
Nigoco Rotterdam.
Nigoco Amsterdam.
Bladiac New York.
Vernotch Chicago.
Bladiac Detroit Mich.
Vernotch Philadelphia Pa.
Lamarkship, Pittsburgh Penn.
Pealane Portland Me.
Pealane Boston Mass.
Vernotch Baltimore Md.
Vernotch Norfolk Va.
Sagterms Montreal Canada.

BILL OF LADING

Received by BLACK DIAMOND STEAMSHIP CORP. hereinafter called the Carrier, from the Shipper hereinafter named, the goods of packages said to contain goods hereinafter mentioned, in apparent good order and condition, unless otherwise indicated in this bill of lading, to be transported subject to all the terms of this bill of lading with liberty to proceed via any port or ports within the scope of the voyage described herein, to the port of discharge or so near thereunto as the ship can always safely get and leave, always afloat at all stages and conditions of water and weather, and there to be delivered or transhipped on payment of the charges thereon. If the goods in whole or in part are shut out from the ship named herein for any cause, the carrier shall have liberty to forward them under the terms of this bill of lading on the next available ship of this line, or, at carrier's option, of any other line.

It is agreed that the custody and carriage of the goods are subject to the following terms which shall govern the relations, whatsoever they may be, between the shipper, consignee, and the Carrier, master and ship in every contingency, wheresoever and whensoever occurring, and also in the event of deviation, or of unseaworthiness of the ship at the time of loading or inception of the voyage or subsequently, and none of the terms of this bill of lading shall be deemed to have been waived by the carrier unless by express waiver in writing signed by a duly authorized agent of the Carrier:

SHIP: S/S "BLACK GULL" PORT OF LOADING: ROTTERDAM

SHIPPER: PHS. VAN OMMEREN (ROTTERDAM) N.V. as agents only

CONSIGNEE: ORDER OF "ORDER BOSTON" or assigns

Notify (If consigned to Shipper's Order) T.D. Downing Co., 88, Broad Street, Boston 10, Mass.
(without liability to carrier, see clause 12 hereof)

PORT OF DISCHARGE FROM SHIP: BOSTON. DESTINATION OF GOODS:
(subject to clause 11 hereof)

SCOPE OF THE VOYAGE: The carrier's general trade is between ports on or adjacent to the East Coast of North America in any order and ports of Holland, Belgium and Germany in any order.

PARTICULARS FURNISHED BY SHIPPER OF GOODS

Shipper's Marks & Numbers	Number of Packages	Description	Gross weight in kilos	Measurement
M C C BOSTON Made in West-Germany 3334 - 6666	3.333	LOADED ON DECK AT THE RISK OF THE OWNERS OF THE GOODS. bags hot pressed Crude Naphtaline In transit from abroad	304.970	

Freight paid

ORIGINAL

We herewith certify that the within mentioned goods have been actually shipped on board
BLACK GULL
p. proc. Van Nievelt, Goudriaan & Co

The goods specified in this Bill of Lading are to be forwarded by steamship's agents to .....
at merchant's risk and ..... expense,
by .....
(Subject to the terms of the transhipment clause contained herein.)

FREIGHT TO BE PREPAID [redacted]

Gross Weight Said To Be Kilos	Measurement Said To Be C B M	Rate	Dollars	

Clause 27:
This contract is subject to Chamber of Shipping War Risk Clauses Nos. 1, 2 and 3 of August, 1937, which are deemed to be incorporated herein with the same force and effect as if fully set forth herein.

IN WITNESS WHEREOF, the master or agent of the said vessel has signed [redacted] Bills of Lading, all of this tenor and date, and if one is accomplished, the

BLACK DIAMOND LINE

BILL OF LADING

(CONTINUED FROM OVERLEAF)

Attention of shippers, passengers, consignees, forwarders, brokers and others is called to the provisions of Sec. 16 of the Shipping Act, 1916, as amended by the Act approved June 16, 1936, in relation to penalty of not more than $ 5000 for rebating, false billing, false classification, false weighing, false report of weights or any other unjust or unfair device or means to obtain or attempt to obtain transportation by water at less than the rates or charges which would otherwise be applicable.

1. This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

2. In this bill of lading the word "ship" shall include any substituted vessel, and any craft, lighter or other means of conveyance owned, chartered or operated by the carrier; the word "carrier" shall include the ship, her owner, operator, demise charterer, time charterer, master and any substituted carrier, whether the owner, operator, charterer or master shall be acting as carrier or bailee; the word "shipper" shall include the persons named as such in this bill of lading and the person for whose account the goods are shipped; the word "consignee" shall include the holder of the bill of lading, properly endorsed, and the receiver and the owner of the goods; the word "charges" shall include freight and all expenses and money obligations incurred and payable by the goods, shipper, consignee or any of them.

3. The scope of voyage herein contracted for shall include usual or customary or advertised ports of call whether named in this contract or not, also ports in or out of the advertised, geographical, usual or ordinary route or order, even though in proceeding thereto the ship may sail beyond the port of discharge or in a direction contrary thereto or depart from the direct or customary route. The ship may call at any port for the purposes of the current voyage or of a prior or subsequent voyage. The ship may omit calling at any port or ports whether scheduled or not, and may call at the same port more than once; may, either with or without the goods on board, and before or after proceeding toward the port of discharge, adjust compasses, drydock, go on ways or to repair yards, shift berths, take fuel or stores, remain in port, sail without pilots, tow and be towed, and save or attempt to save life or property, and all of the foregoing are included in the contract voyage.

4. In any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgment of the carrier or the master is likely to give rise to risk of capture, seizure, detention, damages, delay or disadvantage to or loss of the ship or any part of her cargo, or to any of her passengers, or to make it unsafe, imprudent, inadvisable or unlawful for any reason to commence or proceed on or continue the voyage or to enter or discharge the goods, or disembark passengers at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at, disembarking at or leaving the port of discharge or the usual or agreed or intended place of discharge or debarkation in such port, the carrier or the master may before, during or after loading or before the commencement of the voyage, require the shipper or other person entitled thereto to take delivery of the goods at port of shipment and upon failure to do so may discharge and warehouse or otherwise store the goods, or any part thereof, at the risk and expense of the goods; or the carrier or master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual or intended place of discharge therein or attempting to discharge the goods there, may discharge the goods into depot, lazaretto, craft or other place; or the ship may proceed or return, directly or indirectly, to or stop at any such port or place whatsoever as the master or the carrier may consider safe or advisable under the circumstances, and discharge the goods, or any part thereof, at any such port or place; or the carrier or the master may retain the cargo, or any part thereof, on board until the return trip or until such time as the carrier or the master thinks advisable and discharge the goods, or any part thereof, at any place whatsoever as herein provided, including the port of shipment; or the carrier or the master may discharge and forward the goods, or any part thereof, by any means, rail, water, land, or air, or by two or all of such means, or by any route, whether operated by the carrier or others, at the risk and expense of the goods. The carrier or the master is not required to give notice of discharging or disposition of the goods or the forwarding thereof. When the goods are discharged from the ship, as herein provided, they shall be at their own risk and expense, such discharge shall constitute complete delivery and performance under this contract and the carrier shall be freed from any further responsibility. For any service rendered to the goods as hereinabove provided, the carrier shall be entitled to extra compensation; and if in following the procedure permitted herein the length or duration of the voyage of the ship is increased the shipper and consignee shall pay proportionate additional freight, all of which shall be a lien on the goods.

If the carrier takes any steps with respect to the goods or their disposition after the discharge of the goods as herein provided, the carrier shall be considered as acting solely for and as agent of the shipper and consignee.

5. The carrier, master and ship shall have liberty to comply with any orders, directions, requirements or suggestions, direct or indirect, as to allocation, loading, space, stowage, departure, arrival, sailing, navigating, courses, routes, ports of call, anchorages, stoppage, discharge, embarkation, debarkation, destination, delivery, disposition or movement of ship, cargo or passengers or otherwise however given, whether at port of loading or elsewhere, by the government of any nation or department thereof or any person acting or purporting or seeming to act with the authority of such government or any department thereof, or any committee or person having, or purporting or seeming to have, under the terms of the war risk insurance on the ship, the right to give such orders, directions, requirements or suggestions. Delivery or other disposition of the goods in accordance with such orders, directions, requirements or suggestions shall be a fulfilment of the contract voyage. The ship may carry contraband, explosives, munitions, warlike stores, and may sail armed or unarmed and with or without convoy.

In addition to all other liberties herein, the carrier shall have the right to withhold delivery of the goods, reship to or deposit or discharge the goods at any place whatsoever, postpone the carriage of any or all of the goods, cancel in whole or in part the engagement for carriage of the goods or any part thereof, whether or not loaded upon the ship, require the owner, shipper or consignee to take delivery alongside the ship or surrender or dispose of the goods in accordance with any order, direction, requirement, suggestion or condition or agreement imposed upon or effected from the carrier by any government or department thereof or any person acting or purporting or seeming to act with the authority of either of them.

In any of the above circumstances the contract of carriage shall be deemed fulfilled, the carrier shall not be under any further responsibility in respect of the goods, and the goods shall be solely at their own risk and expense, and all expenses and charges so incurred shall be payable and paid by the shipper, owner or consignee thereof and shall be a lien on the goods.

6. Unless otherwise stated herein, the description of the goods and the particulars of the packages mentioned herein are those furnished in writing by the shipper and the carrier shall not be concluded as to the correctness of leading marks, number, quantity, weight, gauge, measurement, contents, nature, quality or value. Single pieces or packages exceeding 4480 lbs. in weight shall be liable to pay extra charges in accordance with tariff rates in effect at time of shipment for loading, handling, transhipping or discharging and the weight of each such piece or package shall be declared in writing by the shipper on shipment and clearly and durably marked on the outside of the piece or package. The shipper and the goods shall also be liable for, and shall indemnify the carrier in respect of any injury, loss or damage arising from shipper's failure to declare and mark the weight of any such piece or package or from the incorrect weight of any such piece or package having been declared or marked thereon.

7. Goods may be stowed in poop, forecastle, deck house, shelter deck, passenger space, or any other covered space commonly used in the trade for the carriage of goods, and when so stowed shall be deemed for all purposes to be stowed under deck. In respect of goods carried on deck and stated herein to be so carried, all risks of loss or damage by perils inherent in such carriage shall be borne by the consignee but in all other respects the custody and carriage of such goods shall be governed by the terms of this bill of lading and the provisions stated in said Carriage of Goods by Sea Act notwithstanding Sec. 1 (C) thereof. Specially heated or specially cooled stowage is not to be furnished unless contracted for at an increased freight rate.

8. Live animals, birds and fish are received and carried at shipper's risk of accident or mortality, and the Carrier shall not be liable for any loss or damage thereto arising or resulting from any matters mentioned in Section 4, Sub-section 2, a. to p. inclusive of said Carriage of Goods by Sea Act or from any other cause whatsoever not due to the fault of the Carrier, any warranty of seaworthiness in the premises being hereby waived by the shipper. Except as provided above such shipments shall be deemed goods, and shall be subject to all terms and provisions in this bill of lading relating to goods.

9. If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier. The foregoing provision shall also apply where the owners, operators or those in charge of any ships or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

10. General average shall be adjusted, stated and settled according to York-Antwerp Rules 1924 at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these rules according to the laws and usages at the port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currencies shall be converted at the rate prevailing on the last date of discharge of the goods at the port of destination. Average agreements or bonds and such cash deposits as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

11. Whenever the carrier or master may deem it advisable or in any case where the goods are consigned to a point where the ship does not expect to discharge, the carrier or master may, without notice, forward the whole or any part of the goods before or after loading at the original port of shipment, or any other place or places even though outside the scope of the voyage or the route to or beyond the port of discharge or the destination of the goods, by any vessel, vessels or other means of transportation by water or by land or by both such means, whether operated by the carrier or by others and whether departing or arriving, or scheduled to depart or arrive before or after the ship expected to be used for the transportation of the goods. This carrier, in making arrangements for any transhipping or forwarding vessel or means of transportation not operated by this carrier shall be considered solely the forwarding agent of the shipper and without any other responsibility whatsoever. The carriage by any transhipping or forwarding carrier and all transhipment or forwarding shall be subject to all the terms whatsoever of the regular form of bill of lading, freight note, contract or other shipping document used at the time by such carrier, whether issued for the goods or not, and even though such terms may be less favorable to the shipper or consignee than the terms of this bill of lading and may contain more stringent requirements as to notice of claim or commencement of suit and may exempt the on-carrier from liability for negligence. The shipper expressly authorizes the carrier to arrange with any such transhipping or forwarding carrier that the lowest valuation of the goods or limitation of liability contained in the bill of lading or shipping document of such carrier shall apply even though lower than the valuation or limitation herein. Pending or during transhipment the goods may be stored ashore or afloat at their risk and expense and the carrier shall not be liable or detention.

12. The port authorities are hereby authorised to grant a general order for discharging immediately upon arrival of the ship and the carrier without giving notice either of arrival or discharge, may discharge the goods directly they come to hand, at or onto any wharf, craft or place that the carrier may select, and continuously Sundays and holidays included, at all such hours by day or by night as the carrier may determine no matter what the state of the weather or custom of the port may be. The carrier shall not be liable in any respect whatsoever if heat or refrigeration or special cooling facilities shall not be furnished during loading or discharge or any part of the time that the goods are upon the wharf, craft or other loading or discharging place. All lighterage and use of craft in discharging shall be at the risk and expense of the goods. Landing and delivery charges and pier dues shall be at the expense of the goods unless included in the freight herein payable for, if the goods are not taken away by the consignee by the expiration of the next working day after the goods are at his disposal, the goods may, at carrier's option and subject to carrier's lien, be sent to store or warehouse, or be permitted to lie where landed, but always at the expense and risk of the goods. The responsibility of the carrier in any capacity shall altogether cease and the goods shall be considered to be delivered and at their own risk and expense in every respect when taken into the custody of Customs or other authorities. The carrier shall not be required to give any notification of disposition of the goods.

13. The carrier shall not be liable for failure to deliver in accordance with leading marks unless such marks shall have been clearly and durably stamped or marked by the shipper before shipment upon the goods or packages, in letters and numbers not less than two inches high, together with name of the port of discharge. Goods that cannot be identified as to marks or numbers, cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated for completing delivery to the various consignees of goods of like character in proportion to any apparent shortage, loss of weight or damage. When grain is stowed without separation from other grain shipped either by the same shipper or by other shippers, any loss or damage to the combined shipments shall be divided in proportion among the several shipments.

14. The goods shall be liable for all expense of mending, cooperage, baling or reconditioning of the goods or packages and gathering of loose cargo or contents of packages; also for any payment, expense, fine, dues, duty, tax, impost, loss, damage or detention sustained or incurred by or levied upon the carrier or the ship in connection with the goods, howsoever caused, including any action or requirement of any government or governmental authority or person purporting to act under the authority thereof, seizure under legal process or attempted seizure, incorrect or insufficient marking, numbering or addressing of packages or description of the contents, failure of the shipper to procure Consular, Board of Health or other certificates to accompany the goods or to comply with laws or regulations of any kind imposed with respect to the goods by the authorities at any port or place or any act or omission of the shipper or consignee.

15. Freight shall be payable on actual gross intake weight or measurement or, at carrier's option, on actual gross discharged weight or measurement. Freight may be calculated on the basis of the particulars of the goods furnished by the shipper herein but the carrier may at any time open the packages and examine, weigh, measure and value the goods. In case shipper's particulars are found to be erroneous and additional freight is payable, the goods shall be liable for any expense incurred for examining, weighing, measuring and valuing the goods. Such freight shall be paid on damaged or unsound goods. Such freight hereunder to port of discharge named herein shall be considered completely earned on receipt of the goods by the carrier, whether the freight be stated or intended to be prepaid or to be collected at destination; and the carrier shall be entitled to all freight and charges due hereunder, whether actually paid or not, and to receive and retain them under all circumstances whatsoever ship and/or cargo lost or not lost. If there shall be a forced interruption or abandonment of the voyage at the port of shipment or elsewhere any forwarding of the goods or any part thereof shall be at the risk and expense of the goods. All unpaid charges shall be paid in full and without any offset, counterclaim or deduction in the currency of the country of the port of shipment, or, at carrier's option, in the currency of the port of discharge at the demand rate of New York exchange as quoted on the day of the ship's entry at the Custom House of her port of discharge. The carrier shall have a lien on the goods, which shall survive delivery, for all charges due hereunder and may enforce this lien by public or private sale and without notice. The shipper and consignee shall be jointly and severally liable to the carrier for the payment of all charges and for the performance of the obligation of each of them hereunder.

16. Neither the carrier nor any corporation owned by, subsidiary to or associated or affiliated with the carrier shall be liable to answer for or make good any loss or damage to the goods occurring at any time and even though before loading on or after discharge from the ship, by reason or by means of any fire whatsoever, unless such fire shall be caused by its design or neglect.

17. In case of any loss or damage to or in connection with goods exceeding in actual value $ 500, lawful money of the United States, per package, or, in case of goods not shipped in packages, per customary freight unit, the value of the goods shall be deemed to be $ 500, per package or per unit, on which basis the freight is adjusted and the carrier's liability, if any, shall be determined on the basis of a value of $ 500, per package or per customary freight unit, unless the nature of the goods and a valuation higher than $ 500, shall have been declared in writing by the shipper upon delivery to the carrier and inserted in this bill of lading and extra freight paid if required and in such case if the actual value of the goods per package or per customary freight unit shall be found to exceed such declared value the declared value shall nevertheless be deemed to be the declared value and the carrier's liability, if any, shall not exceed the declared value.

Whenever the value of the goods is less than $ 500. per package or other freight unit, their value in the calculation and adjustment of claims for which the Carrier may be liable shall for the purpose of avoiding uncertainties and difficulties in fixing value be deemed to be the invoice value, plus freight and insurance if paid, irrespective of whether any other value is greater or less.

Valuation of goods not shipped in packages but susceptible of being so shipped shall not be greater under this paragraph than would be the case had they been shipped in packages.

18. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the document of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent the notice must be given within three days of the delivery. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered.

19. All agreements or freight engagements for the shipment of the goods are superseded by this bill of lading, and all its terms, whether written, typed, stamped or printed, are accepted and agreed by the shipper to be binding as fully as if signed by him. Any local customs or privileges to the contrary are abrogated. Nothing in this bill of lading shall operate to limit or deprive the carrier of any statutory protection or exoneration from, or limitation of, liability. If required by the carrier, each signed bill of lading

(page 47 to)

EXPLOSIVES OR OTHER DANGEROUS ARTICLES

146.04-5 List of explosives and other dangerous articles and combustible liquids—Con.

Article	Classed as	Label req.	Page No.
Methanol (see: "Alcohol, wood"	Inf. L	Red	127
Methyl acetate	Inf. L	Red	153
Methyl acetone	Inf. L	Red	153
Methyl alcohol (see: "Alcohol, wood")	Inf. L	Red	127
Methyl amyl acetate	Comb. L		317
Methyl amyl ketone	Comb. L		317
Methyl bromide, liquid	Pois. B	Poison	287
Methyl chloride	Inf. G	Red	252
Methyldichlorarsine	Pois. A	Poison gas	261
Methyl formate	Inf. L	Red	153
Mesityl oxide	Comb. L		317
*Mineral spirits. (See: "Compounds, lacquer, paint or varnish reducing, liquid.")			
Mines, explosive. (See: "Explosive mines.")			
Mixed acid	Cor. L	White	236
Monobromobenzene. (See: "Bromobenzene.")			
Monochloracetone, stabilized	Pois. C	Tear gas	297
Monochlorbenzene (*Chlorbenzene*) (*Chlorbenzol*)	Comb. L		317
Monochloroacetone	Pois. A	Poison gas	261
Monochlorodifluoromethane	Noninf. G	Green	252
Monochlorotetrafluoroethane	Noninf. G	Green	252
Monomethylamine	Inf. G	Red	253
*Mortar stain, liquid. (See: "Paint, liquid")	Inf. L	Red	153
Moth Balls. (See: "Naphthalene.")			
Motion-picture film (cellulose acetate base)	No restrictions		193
Motion-picture film, (*nitrocellulose base, positive or negative*).	Inf. S	Yellow	192
Motion-picture film, old and wornout (cellulose acetate base).	No restrictions		193
Motion-picture film, old and wornout (*nitrocellulose base*).	Inf. S	Yellow	193
Motion-picture film, scrap (*cellulose acetate base*)	No restrictions		193
Motion-picture-film scrap (*nitrocellulose base*). (See: "Pyroxylin plastic scrap.")			
Motion-picture film, toy	Inf. S		194
Motion-picture film, toy, standard width	Inf. S	Yellow	194
Motion-picture film, unexposed (*nitrocellulose base*)	Inf. S	Yellow	192
Motor fuel (export shipments only.) (See: "Gasoline.")			
Motor-fuel antiknock compound	Pois. B	Poison	287
*Motor fuel, N. O. S	Comb. L		318
*Motor fuel, N. O. S	Inf. L	Red	154
Motor spirit (export shipments only.) (See: "Gasoline.")			
Muriatic acid. (See: "Hydrochloric acid.")			
Mustard gas	Pois. A	Poison gas	262
Nafta (export shipments only). (See: "Gasoline.")			
Naphtha, coal tar. (See: "Coal tar naphtha.")			
Naphtha distillate. (See: "Petroleum distillate.")			
Naphthalene	Has		343
Naphthalin	Has		343
*Naphtha, petroleum. (See: "Benzine.")			
Naphtha solvent. (See: "Coal tar naphtha.")			
Natural gasoline (casinghead gasoline)	Inf. L	Red	155
Negative cotton. (See: "High explosives.")			
Neon gas	Noninf. G	Green	253

146.27-100 Table K.—Classification: Hazardous articles—Continued

Descriptive name of article	Characteristic properties, precautions required, markings required	Label required	Required conditions for transportation			
			Cargo vessel	Passenger vessel	Ferry vessel, passenger or vehicle	R. R. car ferry, passenger or vehicle
Lime, unslaked. Quicklime.	*Unslaked Lime (Quicklime) is shipped in the form of white, hard lumps or pebbles or crushed or pulverized. It is obtained by burning limestone, dolomite or oyster shells.* *Unslacked lime combines with water to form calcium hydroxide or hydrated lime. This reaction develops heat, which in the absence of enough water and under confined conditions may be sufficient to cause ignition in contact with combustible substances.* *Unslaked lime absorbs moisture from the air when exposed.* Stow away from foodstuffs, organic materials, acids and explosives. Keep dry. Outside containers shall be marked either "Lime, Unslaked" or "Quicklime" or "Hazardous Article."	No label required	Stowage:* "On deck under cover." "Tween decks readily accessible." "Under deck." Outside containers: Steel barrels or drums. Siftproof wooden barrels or kegs. Siftproof wooden boxes. Moistureproofed multiwall paper bags (MIN-W10) not over 100 lbs. net wt. Moistureproofed paper-lined burlap bags (MIN-W11) not over 100 lbs. net wt. Siftproof railroad freight cars.	Stowage:* "On deck under cover." "Tween decks readily accessible." Outside containers: Steel barrels or drums. Siftproof wooden barrels or kegs. Siftproof wooden boxes. Moistureproofed multiwall paper bags (MIN-W10) not over 100 lbs. net wt. Moistureproofed paper-lined burlap bags (MIN-W11) not over 100 lbs. net wt.	Ferry stowage (AA). Outside containers: Steel barrels or drums. Siftproof wooden barrels or kegs. Siftproof wooden boxes. Moistureproofed multiwall paper bags (MIN-W10) not over 100 lbs. net wt. Moistureproofed paper-lined burlap bags (MIN-W11) not over 100 lbs. net wt. Vehicles with lime in nonspecification bags may be transported provided the loading shows no sign of sifting of the lime.	Ferry stowage (BB). Outside containers: Steel barrels or drums. Siftproof wooden barrels or kegs. Siftproof wooden boxes. Moistureproofed multiwall paper bags (MIN-W10) not over 100 lbs. net wt. Moistureproofed paper-lined burlap bags (MIN-W11) not over 100 lbs. net wt. Siftproof railroad freight cars.

It is not required that the above barrels, drums, kegs or boxes be ICC or CFC specification containers, although these specification containers are acceptable, but the officer in charge of loading the vessel shall satisfy himself they are sufficient in all respects for the purpose intended. He shall refuse any containers showing damage, leakage or an inability to properly contain the substance.

*Stowage of unslaked lime: All Unslaked Lime shall be stowed in cool, dry, ventilated compartments in position to permit jettisoning in an emergency and in conformity with the following conditions:
(a) Stowage shall be completely protected from water or other liquids, including spray, rain, exhaust steam or drainage.
(b) Lime in moistureproofed multiwall paper bags or moistureproofed paper-lined burlap bags shall not be stowed resting on deck.
(c) Dry wood dunnaging shall be provided in way of decks, bulkheads, ship's side and frames to prevent drainage, sweat or other moisture contacting the bags. Dunnaging on deck shall be so laid as to provide drainage channels to scuppers, sumps or drain wells.
(d) Lime may be stowed on skips, skids or portable trucks.
(e) Lime in paper or burlap bags stowed without benefit of skips, skids or other trucks shall not be stowed more than ten tiers high and no stowage shall be solid between two bulkheads nor from shell to shell.

Manganese dioxide.....	*In the form of crystals, lumps or powder. General oxidizing agent.* *Insoluble in water.* Do not stow with corrosive liquids (white label). Outside containers shall be marked either "Manganese Dioxide" or "Hazardous Article."	No label required.	Stowage: "On deck in open." "On deck under cover." "Tween decks." "Under deck." Outside containers: Steel barrels or drums. Wooden barrels or kegs, WIC. Wooden boxes, WIC. Fiberboard boxes, WIC.	Stowage: "On deck in open." "On deck under cover." "Tween decks readily accessible." Outside containers: Steel barrels or drums. Wooden barrels or kegs, WIC. Wooden boxes, WIC. Fiberboard boxes, WIC.	Ferry stowage (AA). Outside containers: Steel barrels or drums. Wooden barrels or kegs, WIC. Wooden boxes, WIC. Fiberboard boxes, WIC.	Ferry stowage (BB). Outside containers: Steel barrels or drums. Wooden barrels or kegs, WIC. Wooden boxes, WIC. Fiberboard boxes, WIC.
Napthalene..... Naphthalin. (Crude or refined.)	*White, crystalline, volatile flakes or powder with a strong coal tar odor. Readily ignited by sparks. Gives off heavy, dense smoke when burning and will add materially to a fire. Gives off strong penetrating odor similar to camphor.* *Melting point about 175° F. Will evolve inflammable vapors at or below its melting point.* *Insoluble in water.* *Shipped in the form of flakes, balls, crushed, blocks, grains, tablets.* Stow away from foodstuffs, living quarters and explosives. Outside containers shall be marked either "Naphthalene" or "Naphthalin" or "Hazardous article."	No label required	Stowage: "On deck protected." "On deck under cover." "Tween decks readily accessible." "Under deck (in a cool, dry, well-ventilated hold)." Outside containers: Wooden barrels or kegs Wooden boxes. Fiberboard boxes. *Authorized for Naphthalene having a melting point not lower than 167° F.* Burlap (jute) bags, not over 224 lbs. net wt.	Stowage: "On deck in open." "On deck under cover." "Tween decks readily accessible." Outside containers: Wooden barrels or kegs Wooden boxes Fiberboard boxes *Authorized for Naphthalene having a melting point not lower than 167° F* Burlap (jute) bags, not over 224 lbs. net wt.	Ferry stowage (AA). Outside containers: Wooden barrels or kegs Wooden boxes. Fiberboard boxes. *Authorized for Naphthalene having a melting point not lower than 167° F* Burlap (jute) bags, not over 224 lbs. net wt., when transported within closed body vehicles.	Ferry stowage (BB). Outside containers: Wooden barrels or kegs. Wooden boxes Fiberboard boxes. *Authorized for Naphthalene having a melting point not lower than 167° F* Burlap (jute) bags, not over 224 lbs. net wt., when transported within closed railroad freight cars
Oakum. Twisted jute packing (rope) (treated or untreated).	*Oakum is the fiber of hemp or mixtures of hemp with other fibers and impregnated with pine tar or pitch or other similar substances. Marine oakum is usually made from long, soft pure fiber twisted and is the least hazardous of the various grades of oakum. Plumber's oakum is a mixture of hemp, tow and other fibers.* *Principal risk of these fibers in an oiled condition is their ready ignition by sparks.* Do not stow against bulkheads subject to heat or on deck in open in the rays of the sun. Stow bales in a manner to provide circulation of air and thus reduce chances of heating. Bales shall be marked either "Oakum" or "Hazardous article."	No label required	Stowage "On deck under cover." "Tween decks." Outside containers Wooden boxes. Bales. Bales shall be compressed reasonably tight and bound with wire, metal hoops, rattan, rope or withes. Unbaled or unboxed consignments shall not be accepted.	Stowage "On deck under cover." "Tween decks." Outside containers Wooden boxes. Bales Bales shall be compressed reasonably tight and bound with wire, metal hoops, rattan, rope or withes. Unbaled or unboxed consignments shall not be accepted.	Ferry stowage (AA) Outside containers Wooden boxes Bales Bales shall be compressed reasonably tight and bound with wire, metal hoops, rattan, rope or withes. Unbaled or unboxed consignments shall not be accepted.	Ferry stowage (BB). Outside containers Wooden boxes. Bales. Bales shall be compressed reasonably tight and bound with wire, metal hoops, rattan, rope or withes. Unbaled or unboxed consignments shall not be accepted

Libelants' Exhibit 10 (Continued)

SCOPE OF THE VOYAGE: The carrier's general trade is between ports on or adjacent to the East Coast of North America (subject to clause 11 hereof) in any order and ports of Holland, Belgium and Germany in any order.

PARTICULARS FURNISHED BY SHIPPER OF GOODS

Shipper's Marks & Numbers	Number of Packages	Description	Gross weight in kilos	Measurement
M C C BOSTON Made in West-Germany 3334 - 6666	3.333	LOADED ON DECK AT THE RISK OF THE OWNERS OF THE GOODS. bags hot pressed Crude Naphtaline In transit from abroad	304.970	

ORIGINAL

We herewith certify that the within mentioned goods have been actually shipped on board

BLACK GULL

p. proc. Van Nievelt, Goudriaan & Co

Freight paid

The goods specified in this Bill of Lading are to be forwarded by steamship's agents to .....
at merchant's risk and ..... expense,
by .....
(Subject to the terms of the transhipment clause contained herein.)

FREIGHT TO BE PREPAID ~~FREIGHT TO BE COLLECTED~~

Gross Weight Said To Be Kilos	Measurement Said To Be C B M	Rate	Dollars	

Freight on Value said to be $ ..... at ..... per cent
do $ ..... at ..... per cent
do $ ..... at ..... per cent

ADVANCED CHARGES
COLLECTION FEE

Total $

Clause 27:
This contract is subject to Chamber of Shipping War Risk Clauses Nos. 1, 2 and 3 of August, 1937, which are deemed to be incorporated herein with the same force and effect as if fully set forth herein.

IN WITNESS WHEREOF, the master or agent of the said vessel has signed THREE Bills of Lading, all of this tenor and date, and if one is accomplished, the others shall be void.

Dated at ROTTERDAM, this 9 day of JULI 1952 19

BLACK DIAMOND STEAMSHIP CORPORATION
FOR THE MASTER

By VAN NIEVELT, GOUDRIAAN & Co., as Agents.

By: .....

Attention of shippers is called to the provisions of 18 U.S.C.A. Sec. 835 (Criminal Code 835 as amended), imposing upon shippers a penalty of $5,000 or imprisonment for 10 years or both, for delivering to a carrier packages containing explosives or other dangerous articles without having the contents plainly marked on the outside thereof, or without informing the agent of the carrier in writing of the true character thereof; and also, to the provisions of 46 U.S.C.A. Sec. 170, which provides that any person shipping oil of vitriol, friction matches or gun powder in a vessel which is a common carrier without delivering a note in writing expressing the nature and character of the merchandise to the person in charge of loading the vessel, shall be liable to the United States in the penalty of $1,000.

(CONDITIONS CONTINUED OVERPAGE)

30a 6-1-51-30,000

...withstanding Sec. 1 (C) thereof. Specially heated or specially cooled stowage is not to be furnished unless contracted for at an increased freight rate.

8. Live animals, birds and fish are received and carried at shipper's risk of accident or mortality, and the Carrier shall not be liable for any loss or damage thereto arising or resulting from any matters mentioned in Section 4, Sub-section 2, a. to p. inclusive of the Carriage of Goods by Sea Act or from any other cause whatsoever not due to the fault of the Carrier, any warranty of seaworthiness in the premises being hereby waived by the shipper. Except as provided above such shipments shall be deemed goods, and shall be subject to all terms and provisions in this bill of lading relating to goods.

9. If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and not set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects, are at fault in respect of a collision or contact.

10. General Average shall be adjusted, stated and settled, according to York-Antwerp Rules 1950, except Rule XXIII thereof, at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these Rules, according to the laws and usages at the Port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in United States money.

In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices,

...valuation any under value is greater or less.

Valuation of goods not shipped in packages but susceptible of being so shipped shall not be greater under this paragraph than would be the case had they been shipped in packages.

12. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent the notice must be given within three days of the delivery. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered.

13. All agreements or freight engagements for the shipment of the goods are superseded by this bill of lading, and all its terms, whether written, typed, stamped or printed, are accepted and agreed by the shipper to be binding as fully as if signed by the shipper, any local customs or privileges to the contrary notwithstanding. Nothing in this bill of lading shall operate to limit or deprive the carrier of any statutory protection or exemption from, or limitation of, liability. If required by the carrier, one signed bill of lading duly endorsed must be surrendered to the agent of the ship at the port of discharge in exchange for delivery order.

20. Cargo skids and labor on quay are to be provided by ship's agent for account of consignee at current rates, and any cargo which may be ordered for delivery into flenal depositu, must be taken by an official cartman appointed by the agent of the ship, at current rates for account and risk of consignee.

21. If any bagged or baled goods are landed slack or torn, receiver and/or consignee shall accept its proportion of the sweepings. Ship not responsible for loss of weight in bags or bales torn, mended or with sample holes.

22. Cotton: Description of the condition of the cotton does not relate to the insufficiency of or torn condition of the covering, nor to any damage resulting therefrom and Carrier shall not be responsible for damage of such nature.

23. Specie: Specie will not be shipped or landed by the Carrier; it must be put on board by the shipper, and will only be delivered on board on presentation of the bills of lading properly endorsed; it may be carried on at consignee's risk if delivery is not taken during the ship's stay in port, and in every case the liability of the Carrier shall cease when the specie leaves the ship's deck.

24. SPECIFIED DOCK DISCHARGE: If the carrier makes a special agreement, whether by stamp hereon or otherwise, to deliver the goods hereby receipted for at a specified dock or wharf at the port of discharge, it is mutually agreed that such agreement shall be construed to mean that the Carrier is to make such delivery only if, in the sole judgment of the Master, the ship can safely under her own power, proceed to, lie at, and return from said dock or wharf, always afloat at any time or tide, and only if such dock or wharf is available to the ship immediately the ship is ready to discharge the goods and, that otherwise, the ship shall discharge the goods in accordance with Clause 12 of this bill of lading, whereupon Carrier's responsibility shall cease.

25. Article 700, Maritime Code of The Netherlands, is expressly waived and renounced in respect to shipment of goods under this bill of lading.

26. In view of the issue in Holland of the revised Marine Code operative 1st of February 1936 it is expressly agreed that this bill of lading shall have effect as if such Code were herein incorporated, but only insofar as the provisions of the said Code are compulsorily binding upon the parties hereto. The ship's protest relating facts and circumstances exempting Owners from liability duly sworn to by the Captain and/or one or more members of the crew shall be deemed sufficient proof by parties to this bill of lading of such facts and circumstances.

THE RESPONSIBILITY OF EACH CARRIER IS LIMITED TO HIS OWN LINE.

FOR ENDORSEMENTS

Libelants' Exhibit 8

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW-YORK

A 174-34

In the Matter of the Petition of Skibs A/S Jolund, as owner of the M/S "Black Gull", in a cause of exoneration from and limitation of liability

A 178-380

MARIA ANGELINA VERBEECK, et al.,

Libellants

—against—

BLACK DIAMOND STEAMSHIP CORP.,

Respondent

It is hereby stipulated and agreed by and among the proctors for petitioner, the proctors for respondent, and the proctors for libellants and claimants Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck as follows:

1. If Emile Vrints, Esq. here present at Antwerp and available to testify, were called to testify as a witness on behalf of libellants and said claimants, he would testify as set forth in his affidavit hereto annexed.

Libelants' Exhibit 8

2. If Maria Angelina Verbeeck, here present at Antwerp and available to testify, were called to testify as a witness on behalf of libellants and said claimants, she would testify as set forth in her affidavit hereto annexed.

3. Either or both of said affidavits may be offered in evidence by any party with the same force and effect as though the respective affiants had testified to the facts set forth in their respective affidavits.

4. The following documents, copies of which are annexed to this stipulation may be offered in evidence by any party at the trial, subject to objections as to materiality and relevancy:

a. Certified photostatic copy of certificate of death no. 156-52-116961 issued by the Bureau of Records and Statistics of the Department of Health of the City of New-York, N. Y. dated August 5, 1952.

b. Transportation permit no. 16961 of the same Bureau dated Aug. 4, 1952.

c. Three certificates of the Consul-General of the Kingdom of Belgium in the City of New-York, each dated August 6, 1952, having the Consul-General's reference numbers 4896, 4897 and 4898.

d. Copy of letter of Consul-General of Norway at New-York to Consulate General of Belgium at New York dated August 28, 1952, bearing the Norwegian Consulate General's refere .ce number 62/15/52.

e. Original letter of August 29, 1952 from Black Diamond Lines S. A. Antwerp to Mevrouw Weduwe Jozef Verbeeck, with handwritten translation into English set out thereon.

Libelants' Exhibit 8

f. Original letter of September 11, 1952 from Ministerie van Buitenlandse Zaken en Buitenlandse Handel to Aan Mevrouw Verbeeck.

Dated Antwerp, Belgium, August 5, 1955.

Proctors for Libellants and Claimants:
BIGHAM, ENGLAR, JONES & HOUSTON

Proctors for petitioner:
PYNE LYNCH & SMITH

Proctors for respondent and claimant:
DOW & SYMMERS

Emile Vrints, being duly sworn, deposes and says:

a. That he is a member of the bar of Antwerp, Belgium entitled to practice in all of the Courts of the Kingdom of Belgium excepting the Court of Cassation in which only 15 lawyers are permitted to practice.

b. That there is no provision in the laws of the Kingdom of Belgium for the payment of workmen's compensation or anything similar to that to maritime workers injured in the course of their employment on non-Belgian ships and no provision in said laws for the payment of workmen's compensation or anything similar to that to the widows, children or their dependent relatives of maritime workers killed in the course of their employment on non-Belgian ships.

c. That there is no treaty between the Kingdom of Belgium and the Kingdom of Norway by virtue of which a Belgian maritime worker injured in the course of his

employment on a Norwegian vessel may obtain the benefits of the Norwegian Workmen's Compensation statutes and or by virtue of which the widow, children or other dependents of such a worker killed in the course of such employment may obtain the benefits extended by the Norwegian Workmen's Compensation statutes to like dependents of Norwegian nationals.

d. That under the law of the Kingdom of Belgium, there is no specific age at which the obligation of a parent to support his children ceases, such obligation continuing so long as the need of the child for such support exists.

E. VRINTS

Kingdom of Belgium
Province and City of Antwerp
Consulate General of the
United States of America—ss.

SUBSCRIBED AND SWORN to before me Louise Dec. O'Grady Vice Consul of the United States of America, in and for the District of Antwerp, Belgium, duly commissioned and qualified, this 4th day of August 1955 A. D.

LOUISE DEC. O'GRADY
Louise Dec O'Grady
Vice Consul of the United States of America

(Seal)

Libelants' Exhibit 8

(Seal)

NO. 6289

AFFIDAVIT

The year Nineteenhundred fifty-five, this third day of August, Before me, Mr. Fernand Istas, notary public at Antwerp, substituting my colleague Mr. Antoine Cols, hindered,

Appeared:

Mrs. Maria Angelina *Verbeeck*, born Maria Angelina Anthoni, eatinghouse keeper, widow of Mr. Jozef Verbeeck, residing at Boechout, Heuvelstraat, 57,

Who declared:

a) That she was born on the twenty-eighth day of March nineteenhundred and five, and on the fifteenth day of May ninefeenhundred and twenty-five, she married Jozef Verbeeck at Vremde, at Saint Jan's Church;

b) That three children were born to them of that marriage, viz.:

1. Maurice Verbeeck, born on the twenty-fifth day of September nineteenhundred and twenty-five,

2. Simone Verbeeck, born on the twenty-sixth day of August nineteenhundred and twenty-seven, and

3. Leo Verbeeck, born on the sixth day of December nineteenhundred and twenty-eight;

c) That at the time of his death on the eighteenth day of July nineteenhundred and fifty-two, Jozef Verbeeck

was fifty years of age, having been born on the fourteenth day of March nineteenhundred and two;

d) That, at the time of his death and for some time theretofore, Jozef Verbeeck contributed between eighty thousand Belgian francs and ninety-six thousand Belgian francs per year to the support of his wife and children;

e) That she and Jozef Verbeeck were living together as wife and husband at Heuvelstraat 57, Boechout, at the time of his death;

f) That subsequent to the death of Jozef Verbeeck his body was returned from New-York to Belgium without expense to her; that she received through the Belgian Government the sum of dollars one hundred twenty-two and eleven cents ($122,11) stated to represent the amount still due to the deceased as wages as mess-boy on the steamship "Black Gull"; and through the same channel received the sum of dollars two hundred and nine, nineteen cents ($209,19), stated to represent the equivalent of one thousand fivehundred (1.500) Norwegian Crowns, which was stated to be compensation for loss of his clothing an' personal effects in the steamship "Black Gull";

g) That Black Diamond Lines, société anonyme of Antwerp paid for the plat of ground in the Boechout Cemetery at Boechout in which the body of Jozef Verbeeck was buried; paid the expenses of the funeral services; and paid certain other lesser expenses in connection with said funeral, including the printing of devotional pictures, the printing of death announcements, and the setting up of a mortuary chapel in decedent's home; and said Black Diamond Lines société anonyme sent flowers, and one van den Bergh, a Director thereof, attended the funeral services;

h) That of the contributions made by Jozef Verbeeck

to the support of his wife and children described in part d) hereof, the whole was devoted to the support of all of them, as all lived together in one household, none of the children being then married and it is unpracticable to state separately what part of said contributions inured solely to the benefit of each of them.

Intervening party:

Before closing the present instrument is here intervened Mr. Jean Vermeire, sworn translator to the Court of First Instance sitting at Antwerp, residing at Ekeren, Avenue Veltwyck 10/2, who has given to the appearer, Mrs. Verbeeck, a true and correct translation in the Flemish language of the foregoing statements and who certifies that the translation which follows is true and correct.

(Translation omitted in printing)

Oath:

Immediately afterwards Mrs. Maria Angelina Verbeeck, in testimony of the above declarations, has declared under oath that the foregoing statements are true.

Whereof the present instrument has been drawn up in only one original delivered this day.

After reading, the appearer has signed this instrument after the translation together with the intervening translator and me, notary public.

Libelants' Exhibit 9

Dr. Jules Aeby
Consulting Chemist

DANGEROUS GOODS

Third Edition

1 9 3 8

All Rights Reserved

Editions Lloyd Anversois
12, Rue Vleminckx
Antwerp

Each copy must bear the signature of the author.

Jules Aeby.

PREFACE

Published for the first time in 1910, this book was rapidly sold out already before the war and a second edition appeared in 1922, amended and completed subsequently by two "Supplements" respectively out of press in 1930 and 1934.

This third edition became almost a necessity since the addition of two Supplements to the second made the consultation of three volumes instead of one rather slow and difficult.

Libelants' Exhibit 9

Together the second edition and its two Suppiements contained 692 paragraphs; some have been suppressed, others amalgamated, so as to constitute now a total of 549 forming a "Nomenclature" re-written and modified when deemed necessary.

Further the packing and stowage are described with most of the goods whilst before such has only been the case exceptionally. I trust that, as a consequence, the usefulness of my book is increased and that it will find still more readers, helping to protect human lives as well as goods in water transport, as was its aim 28 years ago.

The following chapter "How to use this book" must be read carefully by all who wish to consult "Dangerous Goods" with advantage. As for the "Introductory and Explanatory Notes" they have been somewhat shortened as it is not so necessary anymore to justify my tentative.

More importance is attached now to explain what it is necessary to know in order correctly to interpret the text describing each commodity.

• • • •

Antwerp, April 1938

THE AUTHOR

HOW THIS BOOK SHOULD BE USED

The English, French and German names, together with the common synonyms of more than five hundred different products, are given in alphabetical order in the "Index". Beside each name, in the Index, a figure is given referring to the number in the text and not to the page. Here the reader will consult the notes on the substance, using the language most familiar to him. He will

also find above and below the principal name, the chemical formula with notice as to whether the body is solid or liquid, an organic compound or not.

The chemical formula will eventually facilitate the identification of a substance; as to the mention of *solid* or *liquid*, it is scarcely necessary to remark on its utility. *Organic compounds* are generally capable of burning when fire is applied, as contrasted with inorganic compounds which, as a rule, have not this property.

The interpretation that will be given to the notes characterizing each body and the use made of the indications given for *packing* and *stowage* will of course vary according to the different categories of readers. I cannot do more than earnestly request them to read the "Introductory and explanatory Notes" that follow, so that they may be in a position to use this book in the spirit in which it has been written.

As much as possible, a certain space has been reserved below each product for manuscript notes.

INTRODUCTORY AND EXPLANATORY NOTES

Origin, need and utility of this book.—During nearly forty years, I have given to the principal Shipping Companies at Antwerp and mainly to the "Société Anonyme de Navigation Belge-Américaine Red Star Line" whose consulting-chemist I was until 1935, information as to the properties of chemical products from the point of view of their possible danger in transport. Further, shipbrokers and agents, charterers and stevedores, also insurance companies and the insured, average adjustors, judges and lawyers, forwarding agents and others have consulted

me about the eventual danger of certain goods. I have frequently acted as expert before the law-courts, or for insurers or assured, concerning statements of averages caused by the presence in cargo of inflammable, explosive or otherwise troublesome substances. Thus occurred the idea to write this book which first appeared in 1910, by putting together my experience and information gathered from the most various sources. Indeed there did not exist, to my knowledge at least, a work comparable to mine, whilst at the same period, at the Seventh Congress of Applied Chemistry, held in London in May and June 1909, Dr. C. A. von Martius of Berlin presented a most interesting report entitled "The Transport of Dangerous Goods on Merchant Vessels" where stress is laid on the necessity of unifying internationally the prescriptions for the transport of dangerous goods by water. By all this the existence of this book seemed justified and its reception by the public and the press as much as the selling out of two editions completed by two "Supplements" prove that its aim has been attained.

• • • •

Definition and classification.—The first question that comes before us and which must be examined, however briefly, is that of what is to be understood by "*dangerous*" merchandise. Let me put stress on the fact that I have used the term "dangerous" appearing in the title of this book already, in its widest possible signification and that the reader must adapt the description for a given article to the existent conditions; the shipowner, the shipping agent, the stower, the underwriter or the manufacturer of chemicals will not necessarily give the same interpretation to my description. What I wish to be understood as *dangerous goods* could be more closely defined as follows: those which of themselves or by reason of chance

circumstances may give rise to difficulties or cause accidents during transport by boat. Thus understood, we may divide "dangerous goods" into five classes:

A) Those that are explosive;

B) Those that are inflammable;

C) Those that are corrosive or caustic;

D) Those that give off evil smells;

E) Those that are poisonous.

A commodity which does not fit into one of these five classes can, in general, be declared as "non-dangerous", but many products belong to more than one of these classes and have therefore to be specially watched.

A classification has only a relative value and, in my opinion, each merchandise must be considered on its own merits. If, notwithstanding this, I give some details and subdivisions of the five established classes, the main reason is to emphasize the complexity of the subject and to permit the reader better to interpret certain descriptions of products as given in this book.

• • • •

B. Inflammable Merchandise:

We must not confuse combustible with inflammable. Combustible means capable of burning, that is of being consumed with or without flame when heat is applied. Thus nearly all organic matter, i.e. that which contains carbon, such as wood, coal, paper, etc. is combustible. By inflammable, on the other hand, we understand a substance which at a more or less high temperature gives off such gases as, in the presence of a naked flame, ignite

or explode. The temperature at which this phenomenon occurs is called "flashing point" or "flash point" (1) and is determined by the Abel-Pensky apparatus. It is clear that the lower the flash point of a liquid, the greater is the danger. The flash points of different substances vary very much, thus ether and bisulphide of carbon flash already under 32°F., alcohol at the ordinary temperature of 57 to 68°F., olive oil at above 419°F. It is clear that as far as fire danger exists, the flash point is a serious criterion and deductions can be drawn from the following information:

In England such liquids as have a flash point below 73°F. (about 23°C.) are considered to be of "special danger", those that flash between 73°F. (about 23°C.) and 150°F. (about 65°C.) are classified as being "less risky".

The Germans call "liquids dangerous as regards fire" (feuergefährlich) those that have a flash point under 70°F. (21°C.) They further distinguish "liquids able to burn readily" (leicht brennbar) flash point between 70°F. (21°C.) and 131°F. (55°C.), "able to burn" (brennbar) flash point from 131°F. (55°C.) to 212°F. (100°C.) and finally such that "burn with difficulty" (schwer brennbar) flash point above 212°F. (100°C.).

In the United States of America "inflammable liquids" are those whose flash point is under 81°F. (27°C.), whilst those flashing between 81°F. (27°C.) and 151°F. (66°C.) are "combustible liquids". By taking the average of these data recognized in England, Germany and the U.S.A., and such an average is well justified seeing the small differences, we come to the conclusion that *a serious danger exists with liquids of flash point under 75°F. (24°C.), whilst those flashing between 75°F. (24°C.) and 144°F. (62°C.) are less to be feared.*

(1) "Ignition point" denotes the temperature at which a body continues to burn; in practice we may rest satisfied with "flash point".

Libelants' Exhibit 9

Following the 549 paragraphs of my publication, I establish hereafter tables of the two categories of liquids.

• • • •

Flash points between 75 and 162°F.

1) Acetic acid.... about 115°F.
2) Aceto acetic acid ethyl ester.... between 70 and 131°F.
3) Adronol acetate.... 135°F.
4) Amyl acetate.... between 70 and 95°F.
5) Amyl alcohols.... about 108°F.
6) Amyl butyrate.... between 70 and 131°F.
7) Benzol dichloride (ortho).... 144°F.
8) Butyl acetate, normal.... 75-77°F.
9) Butyl alcohols.... 93°F.
10) Camphor.... 126°F.
11) Chlor toluene.... between 70 and 131°F.
12) Cumene.... between 70 and 131°F.
13) Cyclo hexanone.... 111°F.
14) Diacetone alcohol.... 113°F.
15) Diethyl sulphate.... between 70 and 131°F.
16) Ethyl glycol acetate.... 117°F.
17) Ethyl lactate.... between 70 and 131°F.
18) Ethyl valerate, iso.... between 70 and 131°F.
19) Ethylene chlorhydrine.... between 70 and 131°F.
20) Ethylene glycolethyl ether.... 104°F.
21) Furfurol.... about 122°F.
22) Glacial acetic acid.... about 111°F.
23) Iso amyl nitrate.... between 70 and 131°F.
24) Iso butyl alcohol.... about 90°F.
25) Methyl cyclo hexanon.... 113-131°F.
26) Methyl glycol.... 97°F.
27) Methyl glycol acetate.... 111°F.
28) Methyl phenyl ether.... between 70 and 131°F.
29) Monobrom benzine.... between 70 and 131°F.

Libelants' Exhibit 9

30) Mono chlor benzene.... under 80°F.
31) Naphtalene.... 125°F.
32) Oxalic diethyl ester.... between 70 and 131°F.
33) Pyrrol.... between 70 and 131°F.
34) Tar.... between 73 and 150°F.
35) Terebene.... between 70 and 131°F.
36) Tetrapol B.... about 90° F.
37) Turpentine.... 95°F.
38) Valerate of amyl.... between 70 and 131°F.

The flash point has only been established for a comparatively small number of liquids and no doubt it should at least be known for all commodities usually found in trade. In most cases the manufacturers will be able to supply the information. When the flash point is not known, an indication about the degree of danger can be found in the boiling point. If the latter is comparatively low f.i. under 122°F. prudence will be required, because even if the vapours of the boiling liquid are not inflammable, they may spoil the packing and surrounding goods.

• • • •

Inflammable Merchandise may be subdivided as follows:

a) *Substances spontaneously inflammable,* i.e. in themselves and without the presence of a naked flame. Such are, for instance, white phosphorus when not kept under water, zinc ethyl, resinate of cobalt, etc. Further there are wet hay, cotton, celluloid waste and other goods quoted in this book, which can heat themselves up to ignition. It is evident that the products subject to spontaneous combustion are the most dangerous.

b) *Those which are inflammable at or below ordinary temperature in presence of a flame:* a large number of these products is quoted in above list (page 30) and

they must be carefully watched especially when their vapours are explosive in mixture with air.

c) *Bodies,* which under normal conditions present no difficulties, but *which under certain circumstances may give off combustible or explosive gases:* of such I may name iron-filings or granulated zinc, aluminium in powder, etc which by reason of dampness, acids or alkalis may give off hydrogen, a combustible and explosive gas; carbide of calcium which, in contact with water, gives off acetylene, a poisonous and explosive gas.

d) *Substances of which the dust in suspension in the air is inflammable:* as colophony, naphtalene, lycopodium.

e) *Substances capable of gathering heat and igniting the organic bodies which they impregnate:* such as fats in rags and cotton waste.

f) *Oxidising agents:* must be specially mentioned because they are numerous and their mixture and friction with organic matters like straw, wood shavings, even sweepings, have more than once occasioned fire; see permanganate of potash, chlorates, etc.

Here an example of my practice: in a case of goods damaged by seawater, I was shown barrels containing bichromate of sodium. These barrels had been made a little damp by sea-water with the result that the packing paper with which the interior of the casks was lined, had become impregnated with bichromate. Now this paper, thus impregnated, was much more easily inflammable than ordinary paper and constituted a greater danger by reason of this secondary cause.

Nitrate of soda, another typical oxidising agent, deserves here a few lines. Despite a rather widespread idea to the contrary, nitrate in itself presents no danger: it will not even take fire and one may plunge hot iron into it without harmful results. But since nitrate is always

more or less damp, and further since it absorbs moisture from the air, it impregnates the bags in which it is packed and these bags, when they have become dry again, are very easily inflammable. An expert captain sent to Chile many years ago, expresses himself as follows:

"The origin of the frequent conflagrations on nitrate ships can usually be traced to carelessness. On many sailing boats and steamers the holds are not closed at night and are therefore exposed to danger. This is particularly the case in the hold near the men's quarters, where the sailors smoke and throw matches and the ends of cigarettes on the bags of nitrate. Insurance companies ought to require all the holds to be closed every evening and they should forbid the use of petroleum lamps and naked flames."

g) *Bodies that may be fired by sparks:* such are straw, hay, pulp, etc. This is the least dangerous class. They can be rendered almost harmless by being transported in packages or at least by being subjected to hydraulic pressure, in such a way as to give no chance to flame or sparks.

• • • •

D. Merchandise which gives off evil odours:

Here as in the case of corrosive products the degree of danger depends on the packing. The word "dangerous" when used in connection with strong smells may seem an exaggeration and might be replaced by the word "troublesome". It must be observed however that besides merchandise which has a disagreeable and even nauseating smell (hydrogen sulphide, assa foetida), there are substances which emit asphyxiating or anaesthetic gases as f.i. bromine and chloroform. Others again, such as chloride of lime, give off discolouring gases. As in the former

case the degree of danger is conditioned to a very considerable extent by the same factors heat and water. In general it may be said that high temperatures favour the emission of odours.

• • • •

The following is a summary in tabular form of the classification determined on for this book:

A. Explosive Merchandise
- a) spontaneously
- b) by fire, friction, shocks, blows, etc.
- c) when mixed with other bodies
- d) by decomposition

B. Inflammable Merchandise
- a) spontaneously
- b) by approaching a flame
- c) giving off combustible or explosive gases
- d) whose dust is inflammable
- e) generating heat when impregnating organic matters
- f) taking fire by spark

C. Corrosive or Mordant Merchandise

D. Evil-smelling Merchandise

E. Poisonous Merchandise

It is obvious however that apart from this classification there are cases which deserve our attention although they may present less danger and be met with less frequently than those described above. I have in mind, for example, merchandise capable of *tainting* the goods in its immediate neighbourhood, such as aniline oil; merchandise that attracts water and is *deliquescent* such as calcium chloride and nitrate of lime and which may therefore ooze out of of its receptacle if this is not very tight.

Further there are products *whose melting point is low* and which therefore must be kept cool or at least at low temperatures, f.i. bornyl acetate which melts at 82° F.

Libelants' Exhibit 9

Packing and Stowage.—As mentioned in the Preface already, much more importance is given in this edition to the packing and stowage of the various goods. It must be realized indeed that the degree of danger depends greatly on the more or less careful packing; if the latter gives an almost complete guarantee of resistance, the risk is practically nil. It is known however how much strain lies on board ships even on the most perfect packings. For many commodities I have suggested types of packings by observing what is done in practice and by taking as guide the description given. From this the reader must not conclude that the quoted packing is compulsory and he is requested to use his own judment: consider whether large or small quantities are to be transported and whether the necessary precautions have been taken for possible breakage of the packing (glass or earthenware). In general, bottles or demi-johns containing corrosive acids are lodged in baskets or metallic crates, surrounded by absorbent incombustible matter. This is what I call in the descriptions "protected containers". An important rule which must never be lost sight of and which has therefore been frequently repeated, is not to fill the containers overmuch in order to permit expansion of the liquid in case the inner temperature rises. As regards liquefied or compressed gases, the steel bottles or cylinders in which they are lodged must have been duly tested and the valves should be well protected.

As far as I am aware, the temperature has never been methodically taken in the holds and hottest parts of ships. It is certain that these temperatures, especially in tropical regions and in case of absence or insufficiency of ventilation, often rise in a wholly abnormal manner. A serious study of the question of temperatures on board ship and especially in the holds would be eminently desirable.

Libelants' Exhibit 9

If the safety on board a ship depends largely on the nature of the goods and on their packing, it is clear however that the way they are stowed plays an important role. For this reason I have mentioned as often as possible whether loading should be done on or under deck, in the open, covered 'tween decks, etc. but here as for the packing those who consult my book must take my indications as suggestions only; they must consider the kind of ship, the length of her journey, the climates to be passed through, the possibilities of removing the goods in case of fire, etc. The stevedore will never lose sight of the fact that many products which are harmless in themselves keep the fire going and may thus become a secondary cause of disaster. I shall explain by means of an example: fire breaks out in a barrel of benzine in the neighbourhood of which steel rails have been placed; the flames find no food and danger is easily averted. But if instead of rails the barrel is surrounded by nitro-compounds, straw, wood or something similar, there will be such a fire as it will be very difficult to overcome.

• • • •

Basal Principles.—Before deciding to publish this book, I hesitated not a little. What should be done to give the maximum of satisfaction to all? How could the book be made complete without being too long? What means were there to render it at once popular and scientific?

My first idea was to name all *negotiable* products, i. e. those which are the subject of trade of some importance, and to say of each whether it is not in any way troublesome, and whether it is or is not dangerous. Business practice, indeed, always asks for a short and categorical reply, and needs only to know whether there is danger or not. I was soon obliged to give up this idea of naming all products, for, if not entirely unattainable, it presents difficulties almost impossible to surmount, in the form of the

immense number of products, which, moreover, increases daily. In limiting myself solely to the mention of *dangerous* merchandise, I tell him who consults my book that a product whose name does not occur in it, probably presents no danger, but of this he cannot be absolutely certain, for no one will ever be able to rely on the completeness of a list.

After these words, it will perhaps seem surprising that I have named certain products which are not the subject of regular commercial transactions, and which have, so to speak, only a scientific interest. As to this point, I would say that many of these products have, to my knowledge, been forwarded as samples, and it seems to me that when one is concerned with very dangerous products, it is important to be as complete as possible.

For the most part, the merchandise that I have mentioned belongs to the category of chemical products, but some exceptions have been made in the case of important articles on the subject of which it is extremely necessary to have information.

I have as far as possible avoided giving collective names, as alkaloids, pharmaceutical products, chemical manures, aniline dyes, etc. If, however, my list contains a few of those most frequently used, it is principally because I wished to repeat several times in the text that this course of proceeding seemed to be inadmissible, and that an exact and complete terminology must always be required.

A word as to terminology and orthography. It was necessary of course to give the English, French and German names of all the products, with as many synonyms as possible. The mention of names entirely chemical and non-commercial such as "dimethyl-ketone" for "acetone", "dioxide of carbon" for "carbonic acid", may seem unnecessary. But experience has shown me that these terms are sometimes used to conceal from the public

the nature of a product, and I thought it well to diminish as far as possible the effectiveness of this not over honest practice, against which, however, there is little in a strictly legal sense to be said.

Desiring to have the synonyms as complete as possible, I have quoted some double names in English with their inversions, as "sulphate of copper" and "copper sulphate"; the object of this was to facilitate the use of the index.

The orthography of German names has caused some difficulty. Certain writers of strong germanising tendencies now write Kalzium instead of Calcium, Zitrat instead of Citrat, Azetyl instead of Acetyl, etc. I take the liberty to observe that, for a book intended for international use, this seems to me unpractical, and I abide by the old spelling. The latter is nearer the derivation of the word and more closely resembles French and English orthography.

The degrees of temperature have been given in Centigrade in the French and German texts, and in Fahrenheit in the English part.

Conclusion.—Before closing, I ask the reader's indulgence in pointing out that it is not sufficient to *read* the notes in which the various articles of merchandise are described; they must also be *interpreted*, for it should not be forgotten that this book is intended for very different categories of persons concerned with the subject, and my responsibility must always remain free; where I should appear too strict to one, another might reproach me for imprudence.

The three points essential above all things to be considered, seem to me the following:

1. In what physical state is the product (liquid, solid or gas)?

2. How is it packed: in glass, barrel, can, etc.?

3. How is it stowed?

Libelants' Exhibit 9

It is obvious that this latter may be done carefully or not very carefully, the goods may be packed level or otherwise, they may be isolated, dangerous contact may be avoided, the temperature may be considerd, and so forth.

One cannot be too strict with regard to the declarations to be made by producers, both as regards exact terminology and as to the nature and characteristics of the product. No one of course can be better informed on the subject than the producer, and it is on him that the final responsibility will always fall.

On the other hand, the decisions of the law courts (Fels Naphta Soap) have proved that if the producer has concealed nothing as to the nature of his merchandise, no responsibility can be imputed to him, but all must rest on the transporter. Hence, in many cases, I have in this book recommended that the producer be required to furnish a declaration certifying that the goods are not dangerous.

It is true that this certificate will not prevent accidents, but it will often serve to cover losses caused by imprudence or by a criminally avaricious spirit.

* * * *

Libelants' Exhibit 9

C^{10} H^{8}

Naphtalene or **Albo-carbon**
Coal tar camphor
Solid **Creosote salts (crude naphtalene)**
Organic compound **Moth balls**
Naphta balls
Tar camphor
White tar

Strong odour. Volatile. Inflammable: flash point 125°F. Its vapours mixed with air are more or less explosive. Crude naphtalene (creosote salts) is more dangerous than the refined. The melting point of the latter should not be below 167°F.

Packing: Bags, cases, barrels or drums according to kind.

Stowage: On deck, covered and protected from the rays of the sun or under deck, in a cool and well-ventilated compartment, away from living quarters and foodstuffs.

• • • •

Libelants' Exhibit 10

EXPLOSIVES OR OTHER DANGEROUS ARTICLES ON BOARD VESSELS

REGULATIONS PRESCRIBED BY THE COMMANDANT OF THE COAST GUARD

(Emblem)

APRIL 9, 1941

(REVISED JULY 17, 1950)

CG 187

TREASURY DEPARTMENT

UNITED STATES COAST GUARD

WASHINGTON

There Are No New Regulations in This Pamphlet Which Have Not Been Published in the Federal Register. This Pamphlet Includes All the Regulations Promulgated and Published on or Before July 17, 1950

Libelants' Exhibit 10

TREASURY DEPARTMENT
UNITED STATES COAST GUARD

EXPLOSIVES OR OTHER DANGEROUS ARTICLES ON BOARD VESSELS

REGULATIONS GOVERNING THE TRANSPORTATION, STORAGE, STOWAGE, OR USE OF EXPLOSIVES OR OTHER DANGEROUS ARTICLES OR SUBSTANCES, AND COMBUSTIBLE LIQUIDS ON BOARD VESSELS

(Emblem)

APRIL 9, 1941
(REVISED JULY 17, 1950)
CG 187

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1950

UNITED STATES COAST GUARD HEADQUARTERS,
Washington, D. C., July 17, 1950.

The regulations in this booklet are applicable to all vessels subject to the provisions of R. S. 4472, as amended (46 U. S. C. 170). The requirements for handling, stowage, storage, and transportation of explosives or other dan-

gerous articles or substances and combustible liquids on board vessels (foreign and domestic) on any navigable waters within the limits of the jurisdiction of the United States, including its territories and possessions, are set forth herein. These regulations do not cover the transportation of inflammable or combustible liquid cargo in bulk and such requirements are published in a separate pamphlet entitled, "Tank Vessel Regulations."

These regulations replace the publication entitled "Explosives or Other Dangerous Articles on Board Vessels," dated April 9, 1941, as revised July 1, 1947, and "Amendment Sheets to Explosives or Other Dangerous Articles on Board Vessels" distributed June 1, 1949. This edition contains all the amendments to the regulations promulgated and published in the Federal Register between April 9, 1941, and July 17, 1950. The changes published in the Federal Register since the Amendment Sheets were distributed June 1, 1949, are contained in Federal Register Document CGFR 49-43 which was published January 11, 1950, in the Federal Register. Section 146.04-5 was amended by deleting the articles "iron oxide," "iron sponge," and "iron sponge, spent," and inserting the articles "iron mass, spent," "iron mass, wet," and "iron oxide, wet," "iron sponge not properly oxidized," "iron sponge, spent," "iron sponge, wet," and "spent oxide." Section 146.09-6, regarding portable magazine chest was completely revised. Table E—Classification: Inflammable Solids and Oxidizing Materials in section 146.22-100 was amended by adding requirements regarding "iron sponge not properly oxidized," "iron mass, spent," "iron sponge, spent," and "spent oxide" and the shipping requirements for "pyroxylin plastics, rods, rolls, sheets, or tubes," and "film support (nitro-cellulose base)" were amended. Paragraph 146.23-10 (b) was amended by adding a new subparagraph (6), providing special approval of the Commandant to

allow the discharging of sulfuric acid in bulk at a pressure of more than thirty pounds per square inch. Section 146.24–15 was amended by changing paragraphs (a) and (l) regarding liquid chlorine in bulk and its transportation with liquid caustic soda. Table K—Classification: Hazardous Articles in section 146.27–100 was amended by deleting requirements for "iron sponge (iron oxide)," and "iron sponge, spent," and new requirements were added for "iron mass, wet"; "iron sponge, wet"; and "iron oxide, wet." Editorial changes in sections 146.03–36 (c) (2), 146.04–5, 146.21–100, and 146.24–100 were also published in the Federal Register, July 15, 1950, as a part of Federal Register Document CGFR 50–16. The publication is reprinted at this time because the supply of the basic edition is exhausted. There were no amendment sheets distributed containing only the changes published January 11, and July 15, 1950.

General authority over and responsibility for the administration and enforcement of the laws and regulations governing the transportation, storage, stowage, or use of explosives or other dangerous articles or substances and combustible liquids on board vessels in the several Coast Guard districts are vested in and imposed upon the Coast Guard District Commanders in charge of such districts.

Shippers, shipowners, operators, vessels' operating forces, and all other persons transporting, carrying, conveying, handling, storing, or stowing on board vessels subject to the requirements of R. S. 4472, as amended, and the International Convention for the Safety of Life at Sea, 1929, any explosives or other dangerous articles or substances and combustible liquids should familiarize themselves with the provisions contained herein. To this end, Coast Guard personnel concerned with the adminis-

tration and enforcement of these requirements will extend every possible assistance.

MERLIN O'NEILL
Merlin O'Neill,
Vice Admiral, U. S. Coast Guard,
Commandant.

CG Distribution (SDL No. 42):
A: None.
B: e (35); c (9); d (2); b f (1).
C: m (1).
D: i m (1).
E: e l m (1).
List 112. (Per special distribution sheet.)

SUBPART—PREFACE

146.01–1 Purpose of regulations.—The purpose of the regulations in this subchapter is to promote safety in the handling, stowage, storage and transportation of explosives or other dangerous articles or substances, and combustible liquids, as defined herein, on board vessels on any navigable waters within the limits of the jurisdiction of the United States including its territories and possessions excepting only the Panama Canal Zone, and to make more effective the provisions of the International Convention for Safety of Life at Sea, 1929, relative to the carriage of dangerous goods.

146.01–2 Source of regulations.—The Commandant of the Coast Guard shall by regulation define, describe, name and classify all explosives or other dangerous articles or substances, and combustible liquids and shall establish such regulations as may be necessary to make effective the purpose intended.

Libelants' Exhibit 10

146.01–3 Plan of regulations.—Regulations setting forth general requirements covering the transportation of explosives or other dangerous articles or substances, and combustible liquids will be found in §§ 146.01–1—146.10–50. Regulations setting forth detailed requirements applicable to individual substances will be found under their particular classification in §§ 146.20–1—146.27–100.

146.01–4 Classifications.—Explosives or other dangerous articles or substances, and combustible liquids are classified in the regulations in this part according to their principal characteristics and properties as follows:

Explosives:
- Class A—Dangerous Explosives.
- Class B—Less Dangerous Explosives.
- Class C—Relatively Safe Explosives.

Inflammable Liquids.
Inflammable Solids and Oxidizing Materials.
Corrosive Liquids.
Compressed Gases.
Poisons:
- Extremely Dangerous Poison, Class A.
- Less Dangerous Poison, Class B.
- Tear Gases or Irritating Substances, Class C.

Combustible Liquids.
Hazardous Articles.

146.01–5 Changes in regulations.—Changes in regulations usually result from the development of new information, altered conditions, improvement in manufacture, or modernized commercial practices. Proposals for changes will be considered by the Commandant of the Coast Guard on his own motion or upon a request submitted by any carrier interest, by industry, or other interested party.

146.01–6 Provisions for notice and public hearing.—Additions, alterations, amendments or repeals of any of the regulations in this subchapter except in an emergency, shall be published and public hearings with respect thereto shall be held on such notice as the Commandant of the Coast Guard deems advisable under the circumstances. Any additions, alterations, amendments or repeals shall, unless a shorter time is authorized by the Commandant of the Coast Guard, take effect ninety (90) days after their promulgation.

Libelants' Exhibit 10

146.01–7 Inflammable or combustible liquids in bulk.—Nothing in the regulations in this part shall be construed as affecting the transportation of inflammable or combustible liquids in bulk, such transportation being governed by the regulations promulgated under the provisions of section 4417a of the Revised Statutes, as amended (46 U.S.C. 391a).

146.01–8 Effective date of regulations.—The regulations in this subchapter shall become effective on and after April 9, 1941.

146.01–9 Supersedes existing rulings.—All rulings in existence on the effective date of the regulations in this part regarding transportation, packing, marking, labeling or storage, as cargo, of explosives or other dangerous articles or substances, and combustible liquids, on board vessels as promulgated by the office of the Director of the Bureau of Marine Inspection and Navigation are superseded by the regulations in this part; except nothing in this provision shall be construed as affecting the transportation of inflammable or combustible liquids in bulk under the provisions of section 4417a of the Revised Statutes, as amended (46 U.S.C. 391a).

146.01–10 Supersedes existing regulations.—General Rules and Regulations in existence on the effective date of the regulations in this part regarding the transportation, packing or stowage, as cargo, on board passenger vessels of hay, straw, baled cotton, baled hemp, or other inflammable material, and refined petroleum having a flashpoint of not less than 110° F., lubricating oils, kerosene or other illuminating oils as promulgated by the Board of Supervising Inspectors of the Bureau of Marine Inspection and Navigation are superseded by the regulations in this part.

Libelants' Exhibit 10

146.01–11 Other requirements under Title 52 of the Revised Statutes.—Nothing contained in the regulations in this subchapter shall be construed as relieving any vessel subject to the provisions of the regulations in this part from any other of the requirements of Title 52 (Secs. 4399 to 4500, inclusive) of the Revised Statutes or acts amendatory or supplementary thereto and regulations thereunder applicable to such vessel, which are not inconsistent herewith.

146.01–12 Local regulations.—Nothing in the regulations in this subchapter shall be construed as preventing the enforcement of reasonable local regulations, now in effect or hereafter adopted, when such regulations are not inconsistent or in conflict with the provisions of the regulations in this part.

SUBPART—GENERAL REGULATIONS

146.02–1 Scope of regulations.—(a) The regulations in this part define explosives or other dangerous articles or substances, and combustible liquids for purposes of safety in transportation or storage on board vessels;

(b) Set forth the requirements that shall be observed in the preparation and packing of explosives or other dangerous articles or substances, and combustible liquids for shipment or storage on board vessels;

(c) Set forth the descriptive name, shipping name, requirements relative to certification, containers, marking, labeling, information required on bills of lading or other shipping papers, manifests or cargo stowage plans;

(d) Set forth the provisions under which permitted explosives or other dangerous articles or substances, and

combustible liquids within the scope of the definitions given herein, may be accepted, handled, stored, stowed, or transported on board vessels, and with respect to rejection and report of faulty containers and the disposition of any explosives or other dangerous articles or substances, and combustible liquids found to be in an unsafe condition when on board a vessel;

(e) Establish such other requirements as may be necessary to make effective the purposes of R.S. 4472, as amended.

146.02-2 Application to vessels.—The regulations in this part apply to all vessels, domestic or foreign, regardless of character, tonnage, size, service and whether self-propelled or not, whether arriving or departing, or under way, moored, anchored, aground, or while in drydock to the extent and in the manner indicated herein.

(a) The regulations in this subchapter shall not apply to any public vessel which is not engaged in commercial service.

(b) The regulations in this part shall not apply to any vessel subject to the provisions of R.S. 4417a, as amended, which is constructed or converted for the principal purpose of carrying inflammable or combustible liquid cargo in bulk in its own tanks, except such vessel shall be subject to the provisions of R.S. 4472, as amended, with respect to explosives prohibited to be transported, stored, or stowed on board any vessel.

(c) Regulations with respect to explosives prohibited by subsection 3, of R.S. 4472, as amended, apply to all vessels.

(d) Regulations with respect to the transportation, storage, or stowage of high explosives on board passenger

vessels apply to all vessels defined as "Passenger Vessels" in § 146.03–36.

(e) Regulations with respect to the transportation, storage or stowage of high explosives on board vessels, other than passenger-carrying vessels, apply to all vessels defined as "Barges" or "Cargo Vessels" in § 146.03–36.

(f) Regulations with respect to the transportation, storage or stowage of explosives (other than high explosives) or other dangerous articles or substances apply to all vessels, except vessels specifically exempted from such regulations by the provisions of R.S. 4472, as amended, or vessels that are, or may be, specifically exempted by the regulations in this part. Vessels specifically exempted by R.S. 4472, as amended, are:

(1) Vessels not exceeding fifteen (15) gross tons when not engaged in carrying passengers for hire;

(2) Vessels used exclusively for pleasure;

(3) Vessels, not exceeding five hundred (500) gross tons while engaged in the fisheries;

(4) Tugs or towing vessels, except as to fire prevention and extinguishing requirements provided for by subsection 6 (b) (iv) of R.S. 4472, as amended;

(5) Cable vessels, dredges, elevator vessels, fireboats, ice-breakers, pile drivers, pilot boats, welding vessels, salvage and wrecking vessels.

(g) Inflammable or combustible liquid cargo in bulk is also exempt from the regulations in this part: *Provided, however*, That the handling and stowage of such liquid cargo in bulk, on board vessels to which the regulations in this part may apply, shall be subject to the provisions of section 4417a of the Revised Statutes, as amended.

(h) Regulations with respect to the transportation, storage, or stowage of combustible liquids packed in barrels, drums, or other packages apply only to passenger vessels.

146.02–3 Application to shippers.—Regulations with respect to definitions, descriptive name, shipping name, packing, marking, authorized containers, labeling and certification of shipments of explosives or other dangerous articles or substances, and combustible liquids, apply to all shippers offering such articles or substances for transportation or storage on board vessels to which the regulations in this part apply.

146.02–4 Application to others.—The provisions of the regulations in this part, insofar as applicable to them respectively, are binding upon owners, charterers, agents, masters, or persons in charge of vessels subject to these regulations and upon all other persons transporting, carrying, conveying, handling, storing or stowing on board such vessels any explosives or other dangerous articles or substances, and combustible liquids.

146.02–5 Compliance.—The applicable provisions of the regulations in this part shall be observed by:

(a) All vessels, domestic or foreign, subject to the regulations in this part, and the owners, charterers, agents, masters or persons in charge of such vessels;

(b) Railway or highway carriers and their operators, owners, agents or representatives when vehicles operated by such carriers and loaded with explosives or other dangerous articles or substances, and combustible liquids are offered for transportation or enter on board a vessel;

(c) All shippers, their agents or other persons offering explosives or other dangerous articles or substances, and combustible liquids for transportation on board vessels;

(d) All persons engaged in the acceptance, handling, stowage, storage or transportation of explosives or other dangerous articles or substances, and combustible liquids on board vessels;

(e) All shippers or carriers of explosives or other dangerous articles or substances, and combustible liquids shall instruct their employees relative to the provisions of the regulations in this part.

146.02–6 Enforcement.—(a) The provisions of R.S. 4472, as amended, and the regulations in this subchapter, shall be enforced by the U. S. Coast Guard of the Department of the Treasury. Enforcement officers may at any time and at any place within the jurisdiction of the United States board any vessel for the purpose of enforcing the provisions of the regulations in this subchapter.

(b) Any collector of customs may, when possessing knowledge that a vessel is violating any provisions of the statute or regulations established thereunder, by written order served on the master, person in charge of such vessel, or the owner or charterer thereof, or the agent of the owner or charterer, detain such vessel until such time as the provisions of the statute and the regulations in this subchapter have been complied with. The master, person in charge or owner or charterer, or the agent of the owner or charterer of a vessel so detained may, within five days, appeal to the Commandant of the Coast Guard who may, after investigation, affirm, set aside, or modify the order of the collector.

146.02–7 Military or naval forces.—The provisions of the regulations in this part shall not be construed to prevent the transportation of military or naval forces with their accompanying munitions of war and stores.

146.02–8 U. S. Army or Navy Department shipments.—Shipments of explosives or other dangerous articles or substances by, for, or to the Army or Navy Depart-

ments of the United States government shall be packed, including limitations of weight, in accordance with the Interstate Commerce Commission regulations for the transportation of explosives or other dangerous articles in effect at time of shipment, unless special packing is required by specific directions of the Army or Navy Departments. Such shipments may be accepted for transportation under either method of packing.

146.02–9 Canadian shipments.—Shipments of explosives or other dangerous articles or substances, as defined herein, which are packed, marked and labeled in conformity with the regulations of the Board of Transport Commissioners for Canada, may be accepted and transported on board vessels within the navigable waters of the United States provided their acceptance and stowage on board the vessel is in accordance with the regulations in this part for the substances involved and provided further that the bill of lading or other shipping paper carries the certifying statement of the shipper that the goods are packed, marked and labeled in accordance with the regulations of the Board of Transport Commissioners for Canada.

14€.02–10 Export shipments.—Shipments to a foreign country may be accepted for transportation when packed, marked, labeled and described in accordance with the regulations of the country of destination. The bill of lading or other shipping paper shall identify such shipments by the shipping name shown in the regulations in this part for the particular substance, and also shall certify that the packing, marking and labeling is in accordance with the foreign regulations and identify by title or otherwise such foreign regulations. Markings on export packages may be in the language of the country of destination. Labels as prescribed in the regulations in this part shall be affixed or printed or stamped upon such export

packages when offered for transportation in lots of one hundred (100) or less packages. Stowage on board a vessel shall be in accordance with the regulations in this part as applicable to the particular character of vessel.

146.02–11 Import shipments.—(a) Import shipments of explosives or other dangerous articles destined upon arrival at domestic ports for further transportation, in original containers, by common carrier by rail, or by common or contract carrier by motor vehicle, shall comply with the Interstate Commerce Commission regulations for the transportation of explosives and other dangerous articles in effect at the time of shipment. The importer shall furnish with the order to the foreign shipper, and also to the forwarding agent at the port of entry, full and complete information as to packing, marking, labeling, and other requirements as prescribed by the Interstate Commerce Commission regulations. (See § 146.05–14)

(b) Import shipments of explosives and other dangerous articles, and combustible liquids, accepted for transportation in a foreign port in outside metal or wooden barrels or drums not exceeding 110 gallons capacity, wooden boxes not exceeding 300 pounds weight of box and contents, or fiberboard boxes not exceeding 65 pounds weight of box and contents, which upon arrival at domestic ports are not destined for transportation in these original import containers by common carrier by rail or common or contract carrier by motor vehicle may be accepted on board vessels provided the shipper certified upon the bill of lading or other shipping paper that the container is in conformity with the regulations of the country of origin. If the country of origin has no regulations governing the transportation by vessel of the explosives and dangerous substances involved, the shipper shall certify that the container is so constructed as to maintain its complete integrity under all conditions likely to be encountered

during transportation. The master of the vessel, before accepting such import shipments, shall satisfy himself that the containers are sufficiently strong to stand, without rupture or leakage of contents, all risks ordinarily incident to transportation.

(c) Stowage of import shipments on board vessels shall be in accordance with the provisions of the regulations in this part.

146.02–12 Inspection of cargo.—(a) On all vessels, other than barges and magazine vessels storing explosives, an inspection of cargoes of explosives or other dangerous articles or substances shall be ordered by the master of the vessel during a voyage to insure that such cargo is carried with safety and that no damage caused by shifting cargo, spontaneous heating, leaking or sifting of containers or from other causes has been sustained since loading and stowage. On such vessels that have dangerous cargo stowed on board for a period exceeding twenty-four (24) hours temperature readings shall be taken at proper intervals and such temperatures recorded and retained as a record for each voyage. When any cargo is discovered to be in a dangerous condition from leakage, sifting, heating, wetting or other causes, such condition shall be corrected in such manner as the judgment of the master may dictate. All unusual circumstances divulged during inspection of dangerous cargo and any action taken as a result thereof shall be a subject for log entry.

(b) On all barges an inspection of the cargo shall be made by the person responsible to the owner, charterer or agent who is in charge of loading and stowing the cargo on board the barge after the stowage has been completed to insure that such stowage has been properly accomplished and that there are no visible signs of damage to any of the containers or apparent evidence of

heating, leaking or sifting of containers or escape of any of the contents of the containers.

(c) On all magazine vessels storing explosives an inspection of the cargo shall be made by the person in charge of the magazine vessel after the stowage has been completed to insure that such stowage has been properly accomplished and that there are no visible signs of damage to any of the containers or apparent evidence of heating, leaking or sifting of containers or escape of any of the contents of the containers.

(d) When inspecting cargoes of dangerous articles capable of evolving inflammable vapors as required in (a), (b), and (c) any artificial means of illumination shall be of a vapor proof type.

146.02–13 Report fires.—The Master of any ocean-going vessel having on board explosives or other dangerous articles or substances as cargo and about to enter a port of

• • • •

(5) Repairs shall not be undertaken in holds that have lately contained cargo consisting of inflammable solids or oxidizing materials until all precautions are taken to see that no residue of cargo is left to create a hazard.

(b) None of the foregoing provisions shall apply to permitted articles of ships' stores and supplies of a dangerous nature although provisions shall be taken to afford safe storage and protection to such stores from any risk incident to the repair work.

(c) Emergency repairs, contrary to the provisions set forth above, may be undertaken when in the judgment of the master such repairs are necessary for the safety of the vessel, its passengers and crew.

Libelants' Exhibit 10

146.02–21 Statements of characteristic properties.—In the second column of the tables shown in §§ 146.20-100; 146.21-100; 146.22-100; 146.23-100; 146.24-100; 146.25-100; 146.26-100; and 146.27-100 are statements in italics setting forth certain characteristic properties of the substances listed therein. It is not intended, that these statements set forth all the characteristic properties of a particular substance and such statements as are shown are informative only.

146.02–22 Preservation of records.—(a) Where the regulations in this part require the preparation of shipping orders, manifests, or other shipping documents, cargo lists, cargo stowage plans, reports and any other papers or records, it shall be the duty of the owner of the vessel to preserve such records or copies thereof in his office or place of business in the United States for a period of at least one year. Persons or corporations chartering or engaging or contracting for the use of vessels under such terms and conditions that they have full and exclusive control of the management and operating of such vessels shall be subject to the same requirement for preservation of records as are imposed upon owners of vessels by this section and in such cases the owners shall not be required to preserve such records.

(b) Any records required to be so preserved shall be produced to the Commandant of the Coast Guard upon his request therefor.

Libelants' Exhibit 10

SUBPART—DEFINITIONS OF WORDS AND TERMS CONTAINED WITHIN THE REGULATIONS IN THIS SUBCHAPTER

146.03–1 Deleted.

146.03–2 Deleted.

146.03–3 Bulk.—The word "Bulk" means substances which are loaded and carried on board a vessel without benefit of containers or wrappers, and received and delivered by the vessel carrier without mark or count: *Provided, however,* That this definition does not apply to initiating or priming explosives.

146.03–4 Deleted.

146.03–5 Cargo.—For the purposes of the regulations in this part "Cargo" is defined as any explosive or other dangerous article or substance, and combustible liquids, as defined within the regulations in this part, laden on board a vessel, with or without being confined within a container, for the purpose of transporting or storing such goods in the vessel.

146.03–6 CFC.—The initials "CFC" refer to Consolidated Freight Classification.

146.03–7 Character of vessel.—The term "Character of Vessel" means the type of service in which the vessel is engaged at the time of carriage of the explosives or other dangerous articles or substances subject to the regulations in this part, i. e., a cargo vessel, a passenger vessel, a ferry vessel, a railroad car ferry or a barge.

146.03–8 Dangerous articles defined.—A dangerous article within the meaning of the regulations in this sub-

chapter is an article falling within any of the following classifications:

Explosives.
Inflammable Liquids.
Inflammable Solids and Oxidizing Materials.
Corrosive Liquids.
Compressed Gases.
Poisons.
Hazardous Articles.
Ships' Stores and Supplies of a Dangerous Nature.

For definitions covering these classifications see the appropriate section within this subchapter. These are §§ 146.20-1—146.20-4; §§ 146.21-1—146.21-2; §§ 146.22-1—146.22-3; §§ 146.23-1—146.23-2; §§ 146.24-1—146.24-2; §§ 146.25-1—146.25-5; §§ 146.27-1—146.27-2; and §§ 147.02-1—147.02-2. Combustible Liquids are defined in §§ 146.26-1—146.26-2.

146.03-9 Deleted.

146.03-10 Explosive range.—The vapors of inflammable liquids (and to a lesser extent of combustible liquids) when mixed with air will in proper proportions form an explosive concentration. The low or "lean" limit and the high or "rich" limit vary in accordance with the characteristics of the liquid involved. The mixture or percent by volume between the "lean" and the "rich" mixtures is termed the "explosive range." Any percentage of the vapor in air between these limits will be likely, upon ignition, to continue to burn with rapidity and violence, sometimes with explosive effects.

146.03-11 Finely divided metals.—The phrase "Finely Divided Metals" is used to describe metals that have been divided into small parts such as aluminum powder, bronze powder, metal cuttings or borings such as are produced in working metals.

146.03-12 Finely divided organic material. — This phrase is used to describe organic material such as charcoal, peat moss, sugar, sulfur, sawdust, powderous mate-

rials such as flour, granular materials such as seeds, grains, and cereals, or like substances.

146.03–13 Fire point.—The term "Fire Point" denotes the temperature at which the vapors given off by the substance, if ignited, will continue to burn. The fire point is generally higher than the flash point, although occasionally they coincide as in the case of ether, carbon disulfide, and a few other substances.

146.03–14 Flashpoint.—The term "Flashpoint" means the temperature at which the substance gives off inflammable vapors which in contact with spark or flame will ignite.

146.03–15 Hermetically sealed.—The term "Hermetically sealed" means perfectly closed or closed airtight by, or as by, fusion, or crimping, so that no gas nor vapor can enter or escape.

146.03–16 Holds gas tight.—This term means that the structural boundaries of the hold are free of openings and constructed sufficiently tight to withstand a gas pressure not in excess of 1 pound per square inch. A hold that will withstand a hose test without leakage may be assumed as being gas tight. Cargo or other openings in the structural boundaries of such holds (except over deck cargo hatches) shall be provided with tight closing means. Cargo hatch openings in the over deck previded with hatch covers and tarpaulins are accepted as satisfactory closing means for such compartment or hold.

146.03–17 ICC.—The initials "ICC" refer to Interstate Commerce Commission.

146.03–18 ICC Regulations.—The term "ICC Regulations" when used in the regulations in this part refers to regulations of the Interstate Commerce Commission for the "Transportation of Explosives and Other Dangerous

Articles" in effect at the time a shipment is moving and subject to the regulations in this part.

146.03–19 Inside containers.—The following abbreviations when used in the tables indicate that the substance is packed in "Inside Containers" of the following descriptions:

"WIC" means With Inside Containers—which may be glass, earthenware, metal, or liners.
"WIL" means With Inside Liners.
"WIMC" means With Inside Metal Containers.
"WIML" means With Inside Metal Liners.
"WPL" means With Inside Paper Liners.

146.03–20 Label.—The term "Label" means the caution label required by the regulations in this subchapter and the regulations of the ICC to be affixed to outside containers of explosives or other dangerous articles or substances.

146.03–21 Marking.—The term "Marking" refers to the descriptive name, instructions, cautions, weight data, or specification marks that are required by the regulations in this subchapter and the regulations of the ICC to be placed upon outside containers of explosives or other dangerous articles or substances or combustible liquids.

146.03–22 Miscible.—For the purpose of the regulations in this part the term "Miscible" is applied only to liquids, and means such liquids are capable of mixing freely, in many cases in all proportions, with water.

146.03–23 Miscibility with water.—This term "Miscibility with Water" is shown in the regulations for the purpose of indicating the adaptability of water in volume in the event of ignition of the liquid.

146.03–24 Navigable waters.—Where used in the regulations in this part the term "Navigable Waters" includes the navigable waters of the United States, its territories

and possessions, but not the navigable waters of the Panama Canal Zone.

146.03-25 N. O. S.—The abbreviation "N. O. S." means not otherwise specified by name in the regulations in this part.

146.03-26 Not permitted.—The term "Not Permitted" means the dangerous articles or substances shall not be offered, placed on board, transported, or stored on a vessel subject to the regulations in this subchapter, when the term is specifically applied in the regulations in this subchapter to a particular substance or vessel.

146.03-27 Outside containers.—The term "Outside Containers" means the outer over-all container which is authorized by the regulations in this part to be used for the packing of the particular substance. As a rule they are specification containers, but in some instances nonspecification outside containers are authorized.

146.03-28 Prohibited.—The term "Prohibited" is applied to the Explosive Substances named and described in subsection (3) of R.S. 4472, as amended, and means such Explosive Substances shall not be offered to any vessel, placed on board, transported, or stored on board any vessel within the navigable waters of the United States.

146.03-29 Shipping papers.—For definition of "Shipping Papers" see §§ 146.05-12, 146.05-13 and 146.05-14.

146.03-30 Soluble.—For the purpose of the regulations in this part, the term "Soluble" means capable of being dissolved in water, forming homogeneous or uniform mixtures. (It is to be noted that some substances freely dissolve and others dissolve very slowly.)

146.03-31 STC.—The term "STC" means the barrel or drum is a "Single Trip Container."

Libelants' Exhibit 10

146.03–32 Storage.—The term "Storage" as used in the regulations in this part means the placing of explosives or other dangerous articles or substances on board a vessel for purposes of safekeeping or accumulation, pending removal therefrom in whole or in part at a subsequent time; the process of "placing on board" and "removing therefrom" occurring without movement of the vessel being involved.

146.03–33 Stowage.—For the purposes of the regulations in this subchapter, the term "Stowage" embraces the art of placing and securing goods on board a vessel within the holds of the vessel, or on the decks, in such manner as to enhance safety during the period of transportation.

146.03–34 Stowage terms defined.—For the purposes of the regulations in this part the following stowage terms are defined:

(a) *On deck in open* means the articles may be stowed on the open weather deck of a vessel. Such cargo may be protected from the elements if necessary or advisable.

(b) *On deck protected* means the articles may be stowed on the open weather deck of a vessel. It is required that dangerous cargo stowed under such conditions shall be protected from the elements by structural erections or from the direct rays of the sun by means of awnings or dunnaging.

(c) *On deck under cover* means the articles may be stowed on the weather deck of a vessel under covered erections, such as forecastle, bridge house, poop, and deck houses, having permanent structural openings to the atmosphere, but no structural openings such as doors, hatches, companionways, or manholes to any living quarters, cargo carrying, or other compartments, unless such

doors, hatches, companionways, or manholes are provided with hinged means for closing off and securing such openings. Stowage shall not be utilized in any deck house containing living quarters, a steering engine or refrigerating unit or refrigerated stowage boxes unless the areas occupied by such units are isolated from the stowage area by permanent and tight metallic division bulkheads.

(d) *Cargo hatch trunkway* means the articles may be stowed in a cargo hatch trunkway provided the trunk is constructed of steel without openings except such openings as are fitted with positive closing means: *Provided further,* That noncombustible hatch closing means, or combustible hatch covers metal lined all over, are fitted at the lower terminus of the trunk securely closing off the cargo hold from the trunkway. A cargo hatch trunkway the upper terminus of which is located in a tween deck space shall not be utilized for such stowage unless fitted with steel hatch covers and then only when such terminus is always visible and accessible during the voyage.

(e) *Tween decks readily accessible* means the articles may be stowed in upper cargo spaces below or off the weather deck, and so stowed as to be readily accessible from the cargo openings (but not in the square of the hatch if the latter is made up of wooden hatch covers) or in a shelter deck directly inboard of structural openings from the weather deck. A vessel having cargo carrying holds which extend from the tank top or lower flat to the weather deck and having no enclosed cargo stowage space imposed above such single holds may substitute "Under deck away from heat" in lieu of "Tween decks readily accessible" stowage.

(f) *Tween decks* means the articles may be stowed in an upper cargo space below or off the weather deck, or in a shelter deck space. Any openings in the bulkheads

forming boundaries of such Tween deck spaces shall be fitted with positive closing means. Hatches shall be provided with a full complement of covers. After stowage of cargo all openings shall be closed and remain closed during the voyage, except for such ingress and egress as is necessary in the operation of the vessel.

(g) *Under deck away from heat* means the articles may be stowed in a cargo space in a deep hold or a Tween Deck hold capable of being ventilated and not subject to heat from any artificial source. Holds of which any boundary bulkhead or deck forms part of the boundary of a boiler room, engine room, coal bunker, or galley shall not be utilized for this type of stowage unless the dangerous substances are stowed not less than twenty (20) feet away from such bulkheads: *Provided, however,* That this limitation shall not apply to cargo spaces in holds adjacent to the engine room of vessels fitted with internal combustion engines.

(h) *Under deck* means that the articles may be stowed in a cargo space in a deep hold or a Tween Deck hold capable of being ventilated. A hold is defined as an area allotted entirely to the carriage of cargo and is bounded by permanent steel bulkheads and decks, and the shell of the vessel, the deck openings being provided with means for effectively closing the hold against the weather, and in the case of superimposed holds, effectively closing off each hold. A cargo space or hold coming within the above definition shall not be used for the stowage of explosives (except fireworks or Relatively Safe Class C explosives) unless closed off to traffic while the vessel is on its voyage. A cargo space or hold containing a crew passage formed by battens or by a mesh or wire screen bulkhead shall not be used for stowage of other dangerous articles or substances, including fireworks and Relatively

Libelants' Exhibit 10

Safe Explosives—Class C, unless watchman service is provided for such areas.

(J) *Under deck but not overstowed* means the articles may be stowed in a cargo space in any hold as defined under (h), the characteristics of dangerous articles so stowed being such as to prevent the stowage of any other type of cargo over same.

(k) *Ferry stowage (AA)* means that a highway vehicle loaded with any permitted explosives or other dangerous articles or substances, or combustible liquids in conformity with all the applicable provisions of these regulations, may be transported on board a ferry vessel when stowed as directed by the vessel's representative. The vehicle need not be in a position to jettison but should be stowed as to be easily accessible.

(l) *Ferry stowage (BB)* means that a railroad vehicle loaded with any permitted explosives or other dangerous articles or substances or combustible liquids in conformity with all the applicable provisions of the regulations in this part, may be transported on board a railroad car ferry when stowed in a location away from sources of artificial heat. The vehicle need not be in position to jettison but should be easily accessible. Railroad car ferries accepting highway vehicles loaded with any permitted dangerous substances indicated as utilizing "Ferry Stowage (AA)" shall stow such vehicle away from sources of artificial heat and easily accessible.

146.03–35 Vapor density.—The term "Vapor Density" is the relative density of the vapor given off by an inflammable liquid as compared with air. A figure less than one (1) indicates a vapor lighter than air and a figure greater than one (1) indicates a vapor heavier than air.

146.03–36 Vessels defined.—For the purposes of the regulations in this subchapter passenger carrying vessels

or passenger vessels, barges and cargo vessels are defined as follows:

(a) *Passenger carrying vessels or passenger vessels.*—(1) A passenger carrying vessel or a passenger vessel is any vessel which carries passengers; provided that no vessel of the following classes shall be considered a passenger carrying vessel or a passenger vessel:

(i) Any vessel subject to any of the provisions of the International Convention for Safety of Life at Sea, 1929, which neither carries nor is authorized to carry more than twelve passengers.

(ii) Any cargo vessel documented under the laws of the United States and not subject to that Convention which neither carries nor is authorized to carry more than sixteen persons in addition to the crew.

(iii) Any cargo vessel of any foreign nation that extends reciprocal privileges and not subject to that Convention which neither carries nor is authorized to carry more than sixteen persons in addition to the crew.

(2) Any passenger vessel that is not designed and built to receive railroad vehicles shall be considered a passenger ferry if it is engaged in a ferry operation.

(3) Any passenger vessel that is designed and built to receive railroad vehicles shall be considered a railroad car ferry.

(b) *Barge.*—Any non self propelled vessel having no passengers on board, shall be considered a barge.

(c) *Cargo vessel.*—(1) Any vessel other than a passenger vessel or a barge shall be considered a cargo vessel.

(2) Any passenger ferry or railroad car ferry shall be considered a cargo vessel during any period it is being

operated under authority of a change of character certificate issued by the Officer in Charge, Marine Inspection.

146.03–37 Volatility.—The term "Volatility" is used to indicate the tendency of a liquid to assume the vapor state. The tendency of a liquid to evaporate is influenced by other factors than the vapor pressure. Increased volatility will result from the influence of a rise in temperature.

146.03–38 W. T.—The abbreviation "W. T." means Watertight.

SUBPART—LIST OF EXPLOSIVES OR OTHER DANGEROUS ARTICLES CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ARTICLES SUBJECT TO THE REGULATIONS IN THIS SUBCHAPTER

146.04–1 Proper shipping name.—The proper shipping name which shall be used and shown on bill of lading or other shipping paper and on outside of shipping containers where required by the regulations in this subchapter, appears in this list in roman type (not *italics*).

146.04–2 Dangerous articles not named.—Any article not properly described by a name shown in this commodity list when such article classifies under the definitions contained herein as a dangerous article shall be prepared and offered for shipment in compliance with the regulations in this part.

146.04–3 Classification.—This list shows the classification of each permitted article or substance. It also shows the articles or substances that are prohibited by the provisions of R. S. 4472, as amended, or that are not permitted by the regulations in this part, for transportation or storage on board vessels.

Libelants' Exhibit 10

146.04–4 Signs and abbreviations.—The meaning of the signs and abbreviations used in § 146.04-5 are as follows:

Asterisk (*) indicates the article may or may not come within the classification shown. If, in accordance with the definitions contained in this subchapter, the article does come within the classification it is subject to the regulations in this part.

Inf. L	Inflammable Liquid.
Inf. S	Inflammable Solid.
Oxy. M	Oxidizing Material.
Cor. L	Corrosive Liquid.
Inf. G	Inflammable Compressed Gas.
Noninf. G	Noninflammable Compressed Gas.
Pois. A	Poison Gas or Liquid, Class A.
Pois. B	Poisonous Liquid or Solid, Class B.
Pois. C	Tear Gas, Class C.
Expl. A	Class A Explosives.
Expl. B	Class B Explosives.
Expl. C	Class C Explosives.
Comb. L	Combustible Liquid.
Haz	Hazardous Article.
Prohibited	Means prohibited by R. S. 4472, as amended.
Not permitted	Means not permitted by the regulations in this subchapter.
No restrictions	Means this item is shown in the regulations only to distinguish it from articles under similar name that are classed as dangerous.

Libelants' Exhibit 10 (Continued)

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Note

Page 45la is
on card 15.

Libelants' Exhibit 10

SUBPART—DETAILED REGULATIONS GOVERNING HAZARDOUS ARTICLES

146.27–1 Definition of hazardous articles.—Hazardous articles are defined by these regulations as set forth in § 146.27-2 and such definition is binding upon all shippers making shipments of hazardous articles by any vessel and shall apply to owners, charterers, agents, master or other person in charge of a vessel, and to other persons, transporting, carrying, conveying, storing, stowing or using hazardous articles on board vessels subject to R. S. 4472, as amended, and the provisions of the regulations in this subchapter.

146.27–2 Hazardous article.—For the purpose of the regulations in this part Hazardous Articles are defined as:

(a) Any article or substance (other than an explosive, inflammable liquid, inflammable solid, oxidizing material, corrosive liquid, compressed gas, poisonous article, or combustible liquid) which is liable when subjected to test for three continuous hours in a Mackey apparatus at or below a temperature of 212° F. to spontaneous heating in excess of 10° F. or which at or below a temperature of 300° F. may liberate vapor susceptible to ignition by spark or open flame.

(b) Any other article or substance which is specifically named in these regulations as hazardous.

146.27–3 Stowage on board vessels.—All hazardous articles permitted for transportation on board vessels shall, when taken on board a vessel, be stowed in accordance with the provisions applying to the particular character of vessel as shown in the tables forming § 146.27-100 and with the general stowage requirements shown herein.

Libelants' Exhibit 10

146.27–4 General stowage requirement.—Hazardous articles shall not be stowed in any compartment or hold in which explosives are stowed.

146.27–5 Liquids exempt.—Liquids which liberate vapor susceptible to ignition at a temperature above 150° F. and which possess no other characteristics which would classify such liquids as dangerous under any other definition in this subchapter, when packed in drums, barrels, or other closed containers and offered for transportation on board vessels as cargo, are not subject to the regulations in this part.

146.27–6 Protection for "on deck" stowage.—Hazardous articles that are permitted stowage "on deck in open" or "on deck protected" may be protected by the use of structural erections, awnings, or tarpaulins.

Libelants' Exhibit 10 (Continued)

(OFFSET)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Note

Page 455a is on card 15.

Libelants' Exhibit 34A

DANGEROUS GOODS.

SECTION 94.

1. (a) For the purpose of the present Decree "explosive substances" shall mean explosives, propellants and charges and similar substances (with the exception of such materials as do not explode upon coming into contact with a flame and are not more sensitive to a knock, jerk or friction than dinitrobenzene), and articles containing one or more of these substances as components, such as:

(1) gunpowder (black powder, nitrate powder, meal powder, blasting powder);

(2) smokeless powder (gunpowder, nitroglycerine powder);

(3) explosive organic nitrates, such as nitroglycerine, nitrocellulose, pentaerythrite, tetranitrate (penthrite);

(4) mixtures of explosive organic nitrates and other explosive or non-explosive substances, such as dynamite and blasting gelatin;

(5) aromatic nitro compounds such as trinitrotoluene (trotyl), hexanitrodiphenylamine (hexyl), picric acid, tetranitromethylaniline (tetryl), trinitroresorcinol, trimethylene trinitroamine (hexogene), nitrated chlorohydrin;

(6) chlorate and perchlorate explosives;

(7) ammonium nitrate explosives;

(8) potassium nitrate explosives, such as calcinite;

Libelants' Exhibit 34.1

(9) primer explosives, such as fulminate of mercury and other fulminates, lead azide and other azides (with the exception of sodium azide), tetrazene;

(10) Ammunition, primers;

(11) Activators, such as safety fuses and safety time fuse igniters, with the exception of safety matches;

(12) Pyrotechnical toys, etc. such as confetti, bombs, Bengalese matches, sparklers, caps;

(13) Fireworks, such as fire crackers, pinwheels, fountains, rockets, flower pots;

(14) Objects fitted with igniter for developing irritating gases, such as tear gas igniters;

(b) Without prejudice to the provisions of the Act of 26th April 1884 (Government Gazette No. 81) and regulations issued in pursuance of the said Act, the explosive substances mentioned under (a) hereof must be stowed so that they can easily be jettisoned or flooded and they are as far as possible away from the living quarters of the ship, from the engine and boiler rooms, from bunkers and from places where work is regularly carried out and at least two metres from the ship's side. If carried below deck they must be stowed at least 3 metres away from the walls of the holds in which coal or other substances liable to self-heating or self-combustion are stowed.

If they are not stowed in a powder-room, they must be placed:

(1) in a hold separated by watertight bulkheads from all other parts of the vessel and from

other cargo, or separated by bulkheads or felt-woollen blankets from other goods;

(2) on deck away from other combustible or dangerous goods and not exposed to the direct rays of the sun.

(c) Primers and substances which can easily be exploded by a knock, jerk or by friction must always be stowed apart from other explosive substances.

(d) Explosive substances and substances mentioned in sub-sections 2 to 8 inclusive hereof may not be stowed in the same space.

(e) If explosive substances are carried in a space located immediately below the topmost deck, no substances mentioned in sub-sections 2 to 7 inclusive hereof may be stowed in the vicinity as deck-cargo.

2. Compressed gases, gases liquified under pressure, liquids boiling at very low temperatures and gases dissolved under pressure in liquids must be stowed so that the containers in which they are packed cannot be damaged by rolling or jerking.

The containers if stowed on deck may not be exposed to the direct rays of the sun. They must always be stowed at a safe distance from bulkheads or pipe lines which may be exposed to heating.

The containers and the degree to which they are filled must satisfy the requirements prescribed by section 19 of the Safety Act, 1934, or requirements which in the judgment of the Head of the Shipping Inspectorate are equivalent thereto.

For carriage in tropical or sub-tropical areas the

requirements as regards the containers and the degree to which they are filled shall be laid down in the book referred to in sub-section 13 hereof, subject to safety limits similar to those prescribed for the Netherlands by section 19 of the Safety Act, 1934, being observed.

The substances mentioned in this sub-section and substances mentioned in sub-sections 1, 6 and 8 may not be stowed in the same space.

3. (a) The carriage of the following combustible liquids shall be effected in conformity with the requirements laid down in schedule V: Hydrocarbons and liquid fuels having a flash point lower than or equal to 55° Celsius which are not miscible with water in every proportion. Liquid fuels shall be deemed to be liquids which are generally used to produce heat, light or propulsive power by combustion.

(b) Combustible liquids other than those mentioned under (a) hereof having a flash point lower than or equal to 55° Celsius must be carried in closed drums or in containers which where the safety aspect is concerned can be deemed to be equivalent thereto. The packaging must leave sufficient room for expansion of the liquid. These combustible liquids must be stowed at a safe distance from bulkheads or pipelines which may be exposed to heating.

Furthermore, they must:

(1) if they are miscible in every proportion with water and their flash point is lower than or equal to 21° Celsius, be stowed as deck cargo, if possible; they must not then be exposed to the direct rays of the sun.

(2) if they are not miscible with water in every proportion and their flash point is lower than or equal to 21° Celsius, they must be carried on deck. If this is not possible, then the carriage may be also be effected below deck upon conditions determined by the Head of the Shipping Inspectorate.

(c) The flash point of the liquids mentioned in this sub-section shall be determined at a barometric pressure of 760 millimetres by means of an Abel-Pensky apparatus.

(d) The substances mentio. ed in the present sub-section may not be stowed near substances mentioned in sub-sections 1, 5, 6 and 7 hereof.

4. Solid substances which are easily inflammable or which when heated to 70° Celsius may evolve combustible gases must be carried in gas-tight containers. These substances must be stowed at a safe distance from bulkheads and pipe-lines which may be exposed to heating.

If stowed on deck they may not be exposed to the direct rays of the sun.
The substances mentioned in the present sub-section and substances mentioned in sub-sections 1, 5, 6 and 7 may not be stowed in the same space.

5. Substances which as a result of absorption of moisture or of contact with water may evolve combustible gases must be packed in gas-tight and watertight containers.

The substances mentioned in this sub-section and the substances mentioned in sub-sections 1, 3, 4, 7 and 8 hereof may not be stowed in the same space.

6. (a) Substances which are liable to self-combustion as

a result of self-heating must be stowed at a safe distance from bulkheads and pipe-lines which may be exposed to heating. If they are not packed in gas-tight containers they must, if possible, be stowed so that they are at all times easily accessible and control is possible by checking the temperature of the cargo.

(b) Materials which upon simple contact with air are liable to ignite within a very short time must always be carried in suitable gas-tight containers and, in so far as they are stowed below deck, after permission has been obtained from and in conformity with directions to be given by the Head of the Shipping Inspectorate.

The substances mentioned in (a) and (b) of the present sub-section and substances mentioned in sub-sections 1, 2, 3, 4, 7 and 9 hereof may not be stowed in the same space.

7. Substances which are rich in oxygen and which in case of fire may keep the fire going and stimulate it by evolving oxygen must if stowed below deck be easily accessible and, if necessary, removable from the hold. These substances must be packed so that sifting out of the contents is effectively prevented.

The substances mentioned in the present sub-section may not be stowed in the same space together with substances mentioned in sub-sections 1, 3, 4, 5 and 6 hereof, nor with "strong acids" coming under sub-section 8 hereof.

8. Corrosive and caustic liquids, and substances which through absorption of water or moisture from the air may turn into corrosive or caustic liquids, and substances which under normal con-

ditions may evolve corrosive vapours or fumes must be carried in sound gas-tight and water-tight containers which are not affected by the contents. If these substances be packed in glass or earthenware containers such containers must be enclosed in a metal, wooden or wicker wrapping. When carried below deck the substances must be placed on a layer of slaked lime or other material of sufficient thickness which, in case of breakage, neutralizes or absorbs the contents of the broken container.

The substances mentioned in the present sub-section may not be stowed in the same space together with substances mentioned in sub-sections 1, 2 and 5 hereof, nor, so far as regards "strong acids", together with those mentioned in sub-sections 7, 9 and 10 hereof.

9. Poisonous, stupefying or irritating gases and substances which may directly or through the effects of water or moisture from the air evolve such gases must be carried in gas-tight containers.

If these substances be carried below deck they must be stowed in a space which is shut off by gas-tight bulkheads from other parts of the vessel and does not adjoin living quarters aboard the vessel. Such space must be well ventilated.

The substances mentioned in the present sub-section may not be stowed in the same space together with substances mentioned in sub-section 3 hereof, nor with "strong acids" coming under sub-section 8 hereof.

10. Solid poisonous substances which do not evolve vapours which are injurious to health, and poisonous liquids which do not evolve any perceptible

quantity of vapour, must be packed so that sifting out or flowing out of the contents cannot take place. They may not be stowed near substances intended for human or animal consumption.

The substances mentioned in this sub-section and "Strong acids" coming under sub-section 8 hereof may not be stowed in the same space.

11. (a) If, in view of the special dangers incidental to the carriage, he deems necessary, the Head of the Shipping Inspectorate may issue supplemental regulations respecting the stowage, the packaging and the quantity to be carried of substances mentioned in this section.

(b) Substances, the carriage whereof is from any cause attended with danger which even the manner of packaging and stowage is incapable of limiting, may, even though they cannot on the basis of their nature be classified under any of the preceding sub-sections of the present section, be excluded from conveyance by ship by the Head of the Shipping Inspectorate.

12. If a substance tendered for carriage can be classified under more than one sub-section of the present section, then the provisions of all the sub-sections concerned must be complied with. Before the loading of a substance coming under the present section is commenced, the loader shall give notice to the Master in due time of the carriage tendered and, if the loading is effected in this country, also to the District Head of the Shipping Inspectorate. In case of doubt concerning the degree of danger entailed by a substance, then in this country the District Head may demand a declaration from the loader with regard thereto and, if necessary, seek expert advice.

Libelants' Exhibit 34-A

13. The most common substances mentioned in the present section shall be listed in a book "Dangerous Cargoes" to be published on behalf of Our Minister, embodying further regulations concerning the manner of packaging and stowage which shall be taken into account in respect of carriage.

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twenty-second day of August one thousand nine hundred and fifty-five of section 94 of the Netherlands "Schepenbesluit" (Shipping Decree) in effect prior to 31st December 1952.

In testimony whereof I have hereunto set my hand this twenty-second day of August 1955.

P. L. Otte

Libelants' Exhibit 35

From the Berlitz Translation Service

Downtown Office: 179 Broadway, New York 7, N. Y.

COrtlandt 7-1112

INSPECTOR-GENERAL
OF SHIPPING
VD/ET

The Hague
Bankastraat 129

John Hudig & Son, Lloyd's Agents
Willemskade 23
Rotterdam

H 33—3681 July 30, 1954

Reference: SS. "Black Gull"

In reference to your letter No. 47631 Z B of July 23, I inform you that to my regret it is not possible to make

Libelants' Exhibit 35

a statement before the American Consul with regard to the regulations in force in this country relative to the transport of naphthalene.

I therefore will limit myself to confirming that at the time of the loading of the SS. "Black Gull", in July 1952 in the Netherlands, the following regulations were in force regarding the transportation of naphthalene:

> "Naphthalene must be packed in closely woven sacks, in wood, or in iron barrels or cases, which are closed in such a manner that any escape of the co...ents is completely obviated.
>
> Stowage may be on deck or under deck.
>
> On deck, the naphthalene must be protected from the effects of the sun's rays, and kept at a distance from the crew's quarters.
>
> Below deck in a well ventilated dry space.
>
> In both cases naphthalene should not be stored with explosives, compressed gases, substances which when damp give off inflamable gases, or substances subject to heating or spontaneous combustion, oxygen containers; also it must be kept away from foodstuffs and rich and bitumenous paints (the latter can leak under influence of naphthalene)."

INSPECTOR GENERAL FOR SHIPPING
per B. E. VAN BRUGGEN

Libelants' Exhibit 45A

B vM. 13th September 1952.
Maître P. H. Valentgoed,
Chief Inspector of Dock Labour,
25 Westerstraat,
ROTTERDAM

Dear Sir,

re: File J. H. & S. Miscellaneous ("Black Gull")

We have been asked by our American correspondents to inform them whether there are in force in the Netherlands any regulations respecting the carriage by sea of dangerous goods and, if so, whether such regulations also deal with the carriage of naphthalene. They refer to the "International Convention for the Safety of Life at Sea, 1929", this also having been subscribed to by the Netherlands and article 24, para. 3, whereof reads as follows:

> "Each Administration shall, from time to time by official notice, determine what goods are to be considered dangerous goods, and shall indicate the precautions which must be taken in the packing and stowage thereof."

The conference at which this Convention came into being passed, in addition, a resolution respecting dangerous goods, reading as follows:

> "5. Dangerous Goods.
>
> The International Conference on Safety of Life at Sea recommends that every possible effort should be made with a view to attaining an international agreement as to what goods should be considered as "dangerous goods" as mentioned in Article 24 of the present Convention and of fixing uniform rules for the packing and stowage of such goods."

Libelants' Exhibit 45A

For the purpose of carrying this Convention and Resolution into effect, regulations were made in America concerning the carriage of explosives and other dangerous goods. The official title of these Rules is "Regulations governing the transportation, storage, stowage or use of explosives or other dangerous articles or substances on board vessels". Under these regulations "Dangerous articles" are classed under different headings. Naphthalene comes under the heading "hazardous articles". Naphthalene is further described as follows:

> "White, crystalline, volatile flakes or powder with a strong coal tar odor. Readily ignited by sparks. Gives off heavy, dense smoke when burning and will add materially to a fire. Melting point about 175 F. Will evolve inflammable vapors at or below its melting point. Insoluble in water. Shipped in the form of flakes, balls, crushed, blocks, grains, tablets."

The regulations prescribe that naphthalene must be stowed well away from food, the crew's quarters and explosives.

Furthermore there are regulations for the packing of naphthalene.

Do you know whether there are any regulations in force in the Netherlands similar to those in America?

Thanking you in anticipation for your reply,

Yours truly,

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true

Libelants' Exhibit 45A

and faithful translation made by me on the twelfth day of August one thousand nine hundred and fifty-five of a carbon-copy of a letter submitted to me for translation, the said document being marked "BEERMAN Exhibit 3 D for identification August 11th, 1955 (initialled) 'EdB' ".

In testimony whereof I have hereunto set my hand this twelfth day of August, 1955.

P. L. OTTE

Libelants' Exhibit 45B

"INSPECTIE VAN DEN HAVENARBEID"
(DOCK LABOUR INSPECTORATE)
1st District

Rotterdam(C')
25a Westerstraat.

Rotterdam(C'), 22nd September 1952.

No. 3385.

Reply to your letter of: 13th September 1952, B v.M.

To:

Maitre A. C. W. Beerman,
181 Schiedamschesingel,
ROTTERDAM

re: carriage of dangerous goods.

I herewith inform you that your letter of 13th September 1952 re: file J. H. & S. Miscellaneous ("Black Gull") has been forwarded to the Shipping Inspectorate, 2nd District, 4 Veerhaven, Rotterdam, for attention.

THE CHIEF INSPECTOR OF DOCK LABOUR
Head of the 1st District
for and on behalf of him:
(signed): undecipherable.

Libelants' Exhibit 45B

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twelfth day of August one thousand nine hundred and fifty-five of a letter submitted to me for translation, the said document being marked "BEERMAN Exhibit 3E for identification August 11th, 1955, (initialled) "EdB" ".

In testimony whereof I have hereunto set my hand this twelfth day of August 1955.

P. L. OTTE

Libelants' Exhibit 45C

"SCHEEPVAART INSPECTIE"
(SHIPPING INSPECTORATE)

Office: INSPECTOR 2nd DISTRICT.

Rotterdam, 9.23.1952.
4 Veerhaven.

re: carriage of dangerous cargoes.

With reference to your letter B vM dated 9.13.52 addressed to the Chief Inspector of Dock Labour and passed on to me I have the honour to inform you that regulations are issued by the Shipping Inspectorate respecting the packing and stowage of the most common dangerous goods when carried by sea.

These regulations were embodied in Schedule XVII to the "Schepenbesluit" (Shipping Decree), which was cancelled in about 1939 and was to be replaced by a book "Dangerous

Cargoes" as mentioned in section 94, sub-section 13 of the Shipping Decree.

This book, although in course of preparation, has not appeared in print so far, and is not, therefore, in my possession.

The conditions as to packing and stowage are, however, known at the Inspector General's office. I have forwarded your letter to the Inspector General, requesting him to deal with the same as soon as possible.

The Inspector of Shipping in the
2nd District
(signed): undecipherable.

To:

Maitres Nolst Trenite, Beersma and Bergma,
181 Schiedamschesingel,
ROTTERDAM.

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twelfth day of August one thousand nine hundred and fifty-five of a letter submitted to me for translation, the said document being marked "BEERMAN Exhibit 3F for identification August 11th, 1955, (initialled) "EdB" ".

In testimony whereof I have hereunto set my hand this twelfth day of August, 1955.

P. L. OTTE

Libelants' Exhibit 45D

"Inspectie Van Den Havenarbeid"
(Dock Labour Inspectorate)
1st District

Rotterdam, 7th October 1952.
No. 3564.

Further to my letter of 22nd September, 1952, No. 3385.

Rotterdam(C)
25a Westerstraat.

To:
Maître A. C. W. Beerman,
181 Schiedamsesingel,
Rotterdam

re: carriage of naphthalene.

Further to my above-mentioned letter I beg to inform you that according to a copy of a letter from the Inspector General of Shipping to the Inspector of that Service at Rotterdam received by me, the following conditions apply with respect to the carriage of naphthalene:

Naphthalene must be packed in closely woven bags, wooden or steel barrels, drums or boxes which must be closed so that sifting out of the contents is adequately prevented.

The stowage may be on or under deck. On deck naphthalene must be protected against the effects of the sun's rays and must be kept away from the crew's quarters.

Under deck in a well-ventilated, dry space. In neither case may naphthalene be stowed together with explosives, compressed gases, substances which together with moisture give off combustible gases, substances liable to self-heating or self-combustion or substances attracting oxygen and

Libelants' Exhibit 45D

they must also be kept away from food and other articles for human consumption and bituminous paints (the latter may start dripping under the influence of naphthalene).

The Chief Inspector of Dock Labour
Head of the 1st District
(signed): J. H. Valentgoed.

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twelfth day of August one thousand nine hundred and fifty-five of a letter submitted to me for translation, the said document being marked "Beerman Exhibit 3G for identification August 11th, 1955, (initialled) "EdB" ".

In testimony whereof I have hereunto set my hand this twelfth day of August, 1955.

P. L. Otte

Libelants' Exhibit 45E

From the BERLITZ TRANSLATION SERVICE
Downtown Office: 179 Broadway, New York 7, N. Y.

COrtlandt 7-1112

Rotterdam, July 23, 1954

JOHN HUDIG & SON COPY
47631

INSPECTOR-GENERAL OF SHIPPING
THE HAGUE.

Sir,

S. S. "BLACK GULL"

We represent American lawyers, who upon the instructions of the cargo insurers, are bringing action against the owners of the above named ship. On July 18, 1952, fire broke out on board a short distance from New York as a result of which the ship and cargo were virtually a total loss. At the inquiry held thereafter, it was shown that the fire broke out in bales of naphthalene, which were stowed on deck and not removed (covered). Part of the naphthalene was loaded in Rotterdam.

At the request of these attorneys we instructed Mr. A. C. W. Beerman to proceed with an investigation according to the regulations in force in July 1952, with regard to the loading and stowage of naphthalene in sacks and we received among others, a letter from the Department of Inspection of Dock-Work, dated October 7, 1952 which states:

"In continuation of my letter quoted above, I inform you

Libelants' Exhibit 45E

that according to a copy I have received of a communication from the Inspector General of Shipping to the Inspector of this Service in Rotterdam, the following conditions apply to the packing and transport of naphthalene:

> "Naphthalene must be packed in closely woven sacks, in wood, or in iron barrels or cases, which are closed in such a manner that any escape of the contents is completely obviated.
>
> Stowage may be on deck or under deck.
>
> On deck, the naphthalene must be protected from the effects of the sun's rays, and kept at a distance from the crew's quarters.
>
> Below deck in a well ventilated dry space.
>
> In both cases naphthalene should not be stored with explosives, compressed gases, substances which when damp give off inflammable gases, on substances subject to heating or spontaneous combustion, oxygen containers; also it must be kept away from foodstuffs and rich and bitumenous paints (the latter can leak under influence of naphthalene)."

Today a representative of the American attorneys called on us and requested us to address ourselves to you again in this matter.

He asks whether it is possible through you, or someone in your name that a statement to be made in the presence of an American Consul in which are indicated the above mentioned conditions in force in July 1952, for packing, transporting and stowing of naphthalene, the purpose of which

Libelants' Exhibit 45E

is that the name and office of the person who makes the statement in the document would be mentioned and said document would be certified by the Consul.

Any expense attached may be charged to our account.

Thanking you in anticipation for all the cooperation which you can give etc.

JOHN HUDIG & SON

Exact Copy.
Rotterdam, August 10, 1955.

Respondents' Exhibit 3

Plan of "Black Gull" stowage of deck cargo.

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Note

Page 475a-2 is large
plan on Card 18

Petitioners' Exhibit O

Photograph.

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Petitioners' Exhibit O

Alfred H. Miller Co., Inc.
23 WILLIAM STREET · NEW YORK 5, N. Y.

S. S. Black Falcon
Febuary 2, 1956

Petitioners' Exhibit P

Photograph.

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Petitioners' Exhibit P

Alfred H. Miller Co. Inc.
25 WILLIAM STREET · NEW YORK 5, N. Y.

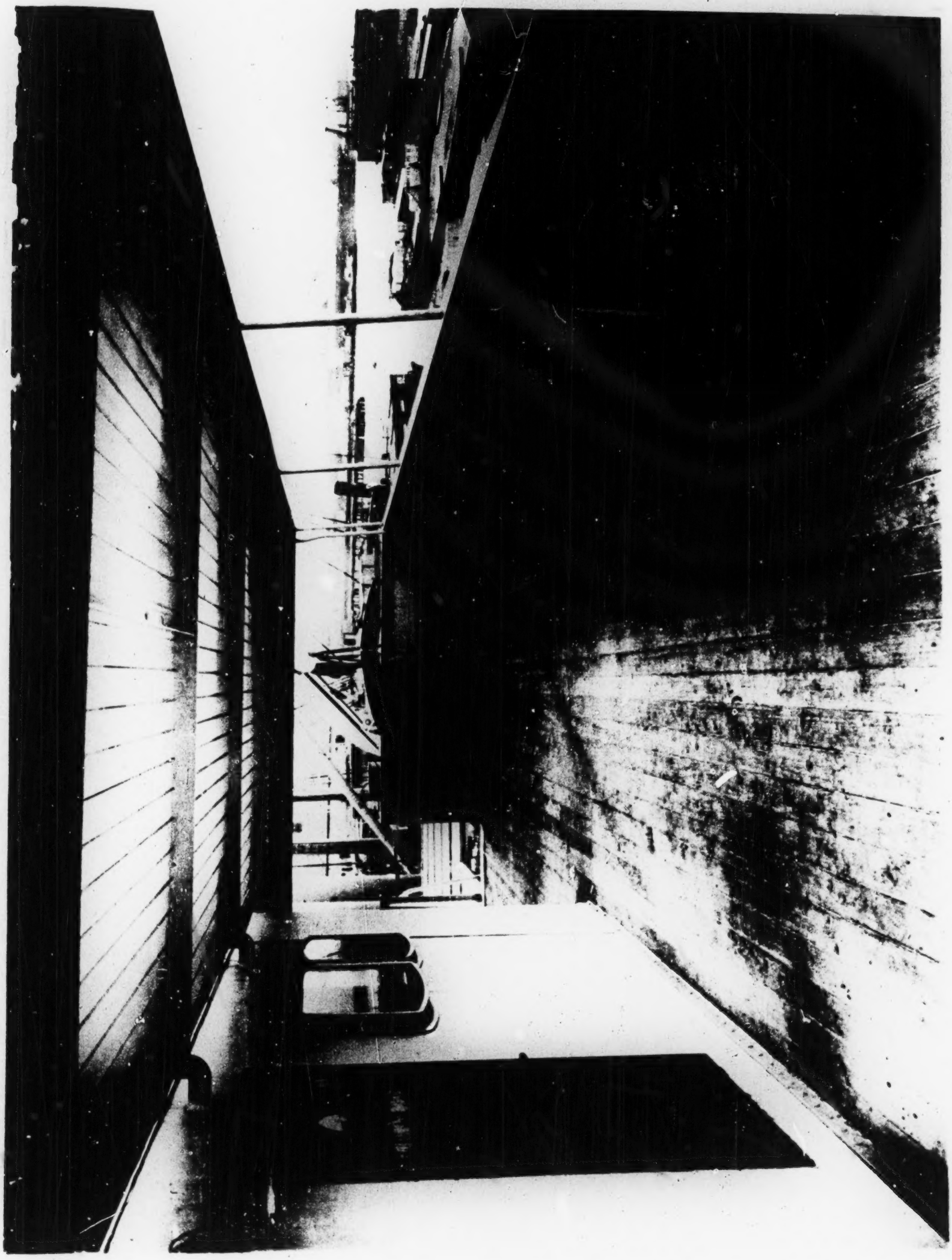
S. S. Black Falcon
Febuary 3, 1956

Petitioners' Exhibit Q

Photograph.

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Petitioners' Exhibit Q



Alfred H. Miller Co., Inc.
2. WILLIAM STREET - NEW YORK 5, N. Y.

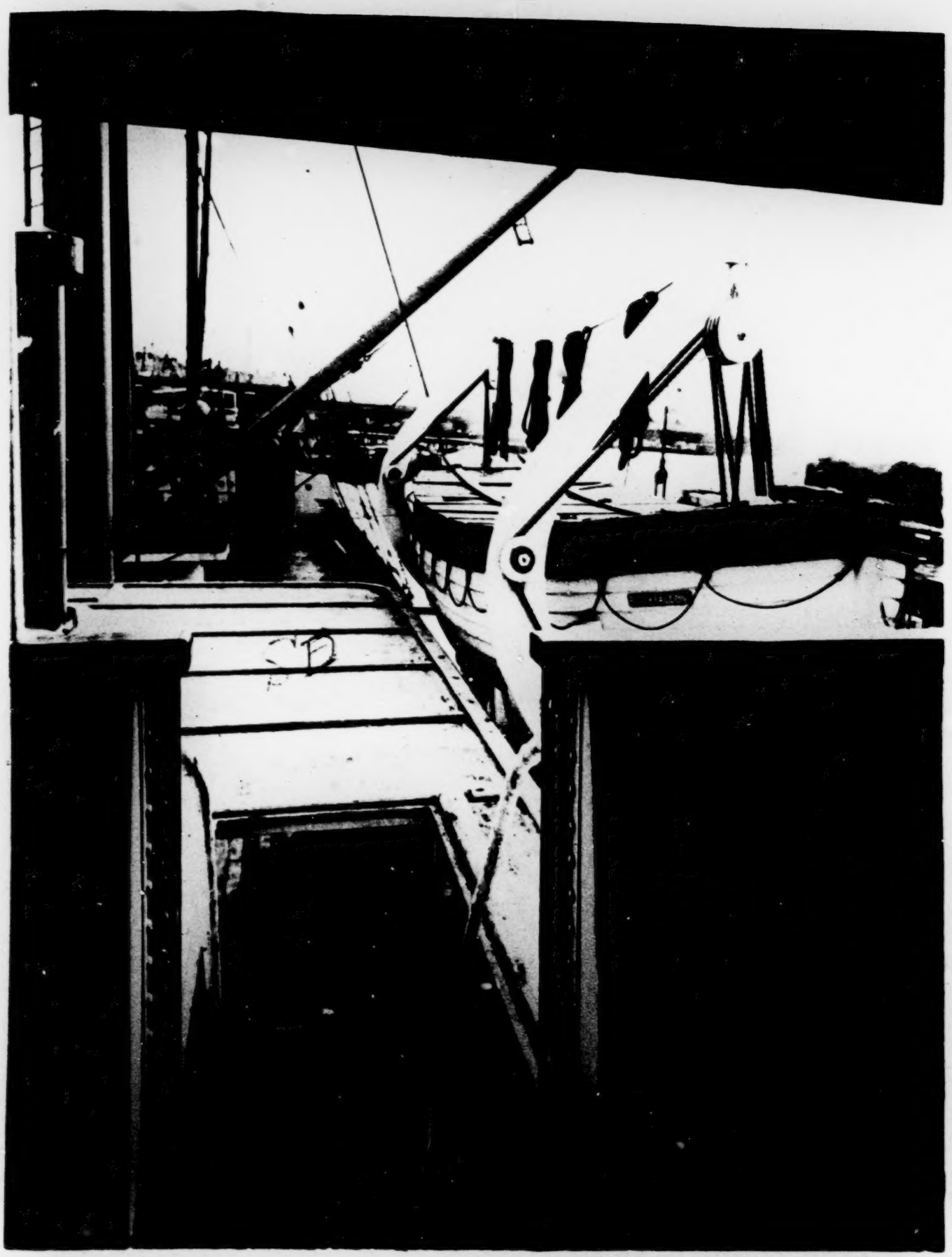
S. S. Black
Febuary 2, 1.

Petitioners' Exhibit R

Photograph.

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Petitioners' Exhibit R



Alfred A. Miller Co. Inc.
23 WILLIAM STREET · NEW YORK 5, N. Y.

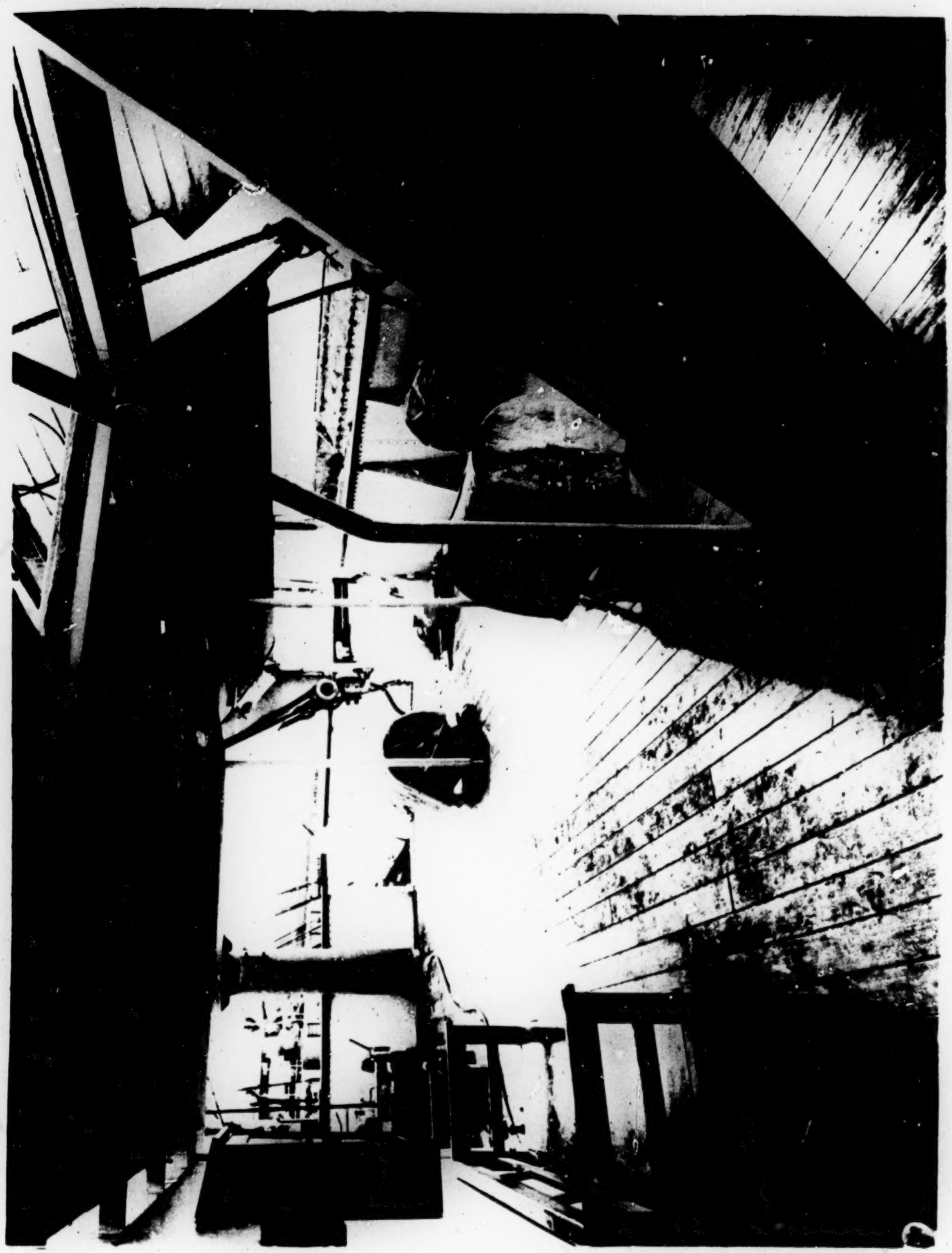
S. S. Black Falcon
Febuary 3, 1956

Petitioners' Exhibit S

Photograph.

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Petitioners' Exhibit S



Alfred H. Miller Co. Inc.
23 WILLIAM STREET · NEW YORK 5, N. Y.

S. S. Black Falcon
Febuary 7, 1956

Petitioners' Exhibit T

Cardboard diagram of stow.

(PHOTOPRINT)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

TOPP AV STUASJEN
top of stuvage

FORKANT
front

FUG

FUG (2)

STUASJEN SETT FRA INNSIDEN stowage seen from the inside

GANGVEI
Gangway

B.B. LUKEKARM Nº 4
P/H Coaming H.C.

& Flanging Weld

TOPP. Nº 4 LUKE
Top H.C. hatch

Petitioners' Exhibit T
(p. 487e)

Petitioners' Exhibit W

SHIPPING INSPECTORATE
Bureau
Inspector 2nd District

Rotterdam, 3rd May 1954.
4 Veerhaven.

No. 1780

re: carriage of naphthalene.

In reply to your request regarding carriage of naphthalene, I beg to inform you on behalf of the Inspector General that the advice of the Chemical Adviser to the Labour Inspectorate has been sought, and he has given the following information:

"Naphthalene is a hydrocarbon obtained from certain coal tar distillates by crystallization. Pure naphthalene melts at 80°C and boils at 218°C. Although its boiling-point is high, naphthalene is more or less volatile even at lower temperatures (even below melting point) and may, therefore, generate inflammable vapours if only slightly heated. Perhaps this is one of the reasons why this substance easily ignites. Apart from pure naphthalene, there are products marketed under the same name which contain residues of the tar oil from which they have been crystallized. It is conceivable, even if improbable, that these impurities are more volatile than naphthalene. This might be an argument for not covering naphthalene loaded on deck in accordance with Messrs. van Nievelt Goudriaan's views. On the other hand, the impurities are liquids, and during prolonged transport may be absorbed by the fabric of the bags, making them more inflammable. Naturally, covering will diminish the risk of ignition from outside. A third possibilty is that of impure naphthalene containing substances liable to self-heating. In that case

Petitioners' Exhibit W

(for which, however, I have not been able to find any indications in the literature) covering would again have an adverse effect.

As to the cause of the fire on board m. v. "Black Gull", I can form no opinion. I incline to the view that ignition from outside is the greatest danger during carriage of naphthalene, so that in case of carriage on deck it is better to cover the cargo."

I am enclosing a copy of the regulations concerning naphthalene included in the handbook "dangerous cargoes" which is going to be published.

The Shipping Inspector
2nd District
(signed): J. VISSER

To:

N. V. van Nievelt Goudriaan en Co.,
ROTTERDAM.

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twenty-second day of August one thousand nine hundred and fifty-five of a photostat copy of a letter submitted to me for translation.

In testimony whereof I have hereunto set my hand this twenty-second day of August, 1955.

P. L. OTTE

Petitioners' Exhibit W

SHIPPING INSPECTORATE
Bureau

Inspector 2nd District

Rotterdam, 3rd May 1954.
4 Veerhaven.

NAPHTHALENE.

properties: solid, crystals, flakes or powder, inflammable, strong smell, volatile.

bituminous paints may start dripping under the influence of naphthalene fumes and thus damage cargo.

comes under section 99, sub-section 7(c), of the Shipping Decree, 1952.

packing: close-woven bags, barrels, drums, wooden or steel boxes closed so that contents are effectively prevented from sifting out.

stowage: on deck protected from the sun's rays; or below deck in a well-ventilated, dry hold, in a cool place. In neither case together with explosives or compressed or liquefied gases, or material which, together with moisture, generate inflammable gases, or are liable to self-heating or self-combustion, or oxygen carriers, nor near foods or other articles for human consumption or bituminous paints or crews' quarters.

particulars: if powdered naphthalene is transported, the container should be closed very well because naphthalene dust-clouds in the air may cause explosions.

Open fires and smoking near a cargo of naphthalene must be prohibited.

Petitioners' Exhibit W

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twenty-second day of August one thousand nine hundred and fifty-five of the enclosure referred to in the letter dated 3rd May 1954 from the Inspector of Shipping 2nd District to N. V. van Nievelt Goudriaan en Co. of Rotterdam, a photostat copy whereof was also translated by me this day.

In testimony whereof I have hereunto set my hand this twenty-second day of August, 1955.

P. L. Otte

Memorandum of Dimock, *D. J.*

#328

(2565)

[SAME TITLE.]

(2566)

Memorandum

Dimock, *D. J.*

This controversy arises out of a fire which occurred on the Norwegian M/V "Black Gull", on July 18, 1952. As a result of this fire, the vessel became a constructive total loss and most of her cargo was either destroyed or damaged. Four members of the crew lost their lives. Other members of the crew and some of the passengers allege that they were injured and that they lost their baggage and personal effects.

Memorandum of Dimock, D. J.

Four proceedings have been instituted as a result of this disaster. The first is a proceeding for exoneration from or limitation of liability instituted by Skibs A/S Jolund, owner of the "Black Gull". The second and third cases are suits for non-delivery of and damage to the cargo which was on board the "Black Gull" at the time of the fire. Libelants, in those two suits, are the owners or underwriters of that cargo. Respondent in those suits, Black Diamond Steamship Corp., was the time charterer of the "Black Gull" and issued the bills of lading for the cargo carried on that voyage. The fourth proceeding is one for wrongful death of a Belgian mess-boy, brought by his widow and children against the same respondent.

There is no real dispute about the facts leading up to the disaster. The vessel left Rotterdam on July 10, 1952, bound for United States east coast ports, the first of which was to be New York. She carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp and Rotterdam. In addition, she carried on the weather deck approximately five hundred fifty tons of crude naphthalene in previously used jute or burlap bags which had been loaded in Antwerp and Rotterdam. The vessel on this voyage was manned by a crew of forty and carried nine passengers.

The crude naphthalene was stowed about six bags high. The stow covered both port and starboard sides of the afterdeck over an area of some 13-16 feet wide and approximately 90 feet long. The forward weather deck of the vessel, both port and starboard, contained an approximately similar stow of bagged crude naphthalene. In athwartship direction, the stow started just inboard of the bulwarks and continued to a line about three feet out from the sides of the hatch coamings. A dunnage fence kept the stow clear of the bulwarks and permitted a three foot wide passageway through which members of the crew could pass. This passageway also kept sounding plugs

and hose connections available to the crew. The stow was secured in place by rope nets but was otherwise uncovered. (2567)

On the evening of July 18, 1952, the vessel passed the Nantucket Shoals Light on her way to New York. At about eleven o'clock, the deck officer, standing on the starboard wing of the bridge, heard what he described as "a hollow dull dump" from the afterpart of the vessel. Looking in that direction, he saw smoke and a small flame coming from the after weather deck port side abreast number 4 hatch about 100 feet from his position on the bridge. After ordering water on deck, he went to the area in the vicinity of the smoke. He there saw fire in the middle of the top of the load and fire on the side of the load between the second and third tiers from the top.

Although an attempt was made to extinguish the fire, it was necessary to abandon the vessel about four and a half hours after the fire was discovered.

During the voyage, the temperatures ranged from a high of 77° F. to a low of 61° F. The last recording taken on the 4-8 P. M. watch on July 18th indicated a temperature of 72° F. These temperatures were taken on the bridge and therefore indicated the temperature in the shade only. Libellants

~~Passenger claimants~~ allege that the fire was caused in one of two ways. They state that it was caused either by external ignition from something like a cigarette butt or spark or that it was caused by spontaneous combustion in the stow of naphthalene. They further allege that negligence of the petitioner or respondent was responsible for the disaster, whether the physical cause of the fire was external ignition or spontaneous combustion.

In order to recover, libelants must prove that the fire was caused through design or neglect of the petitioner or respondent. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72.

Memorandum of Dimock, D. J.

Here, there are two possible causes of the fire. Passenger-~~claimants~~ libelants expressly conceded this point in their brief filed subsequent to trial. While the libelants have attempted to rule out spontaneous combustion as a cause of the fire, the evidence clearly shows it to be chemically possible. There was testimony of a "hollow dull dump" immediately before the fire was discovered. Dr. Purdy, respondent's expert, testified that a fire caused by ignition from a spark or cigarette butt on the top of the stow would probably not commence with such a sound. Since the bags were packed so closely together that no crevices remained between them, it is doubtful that an outside ignition source could have found its way below the top of the stow. In addition, the location of the start of the fire lends credibility to the possibility of spontaneous combustion. The fire was first discovered in the middle of the top of the stow and on the side (2568) of the stow between the second and third tiers from the top. Under cross-examination by the libelants, Dr. Purdy testified that a fire which started on the top of the stow would not naturally work directly downward; rather, he stated, it would be expected to flame over the surface and through the flow of melting naphthalene to distribute the fire. On the other hand, a fire which started within the stow would naturally work out to the side at that level and work up to the top directly above it. This is exactly the position of the fire when first discovered. Thus, since a fire resulting from spontaneous combustion would start within the stow, this lends further strength to that possibility in this disaster.

Dr. Purdy, the expert called by respondent, testified as to the possibility of spontaneous combustion of the bagging having caused this fire. He stated that self-heating may cause a fire in previously used bags in which impurities from prior commodities might remain. In two tests he ran involving similar bagging, some self-heating

resulted. From these experiments he stated that, without definitely knowing that no impurities were present in the bags on the "Black Gull", spontaneous combustion was chemically possible. Both Dr. Purdy and Dr. Snell, the experts called by libelants, agreed that, once the bagging started to burn, the heat from the burning bagging would ignite the naphthalene.

There being no direct testimony as to an external ignition, spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire.

Libelants must prove that petitioner or respondent was negligent and that negligence was the cause of the fire whether it was started by external ignition or by spontaneous combustion. Without this proof, the fire might have been caused without any negligence on the part of petitioner. In that event, libelant would be barred from recovery. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72, supra.

There are, therefore, two questions that are immediately before me. They are: (1) If the fire was caused by spontaneous combustion, did any negligence of petitioner or respondent cause the spontaneous combustion? (2) If the fire was caused by external ignition, did the failure to cover the stow of naphthalene with a tarpaulin proximately cause the fire? I will discuss these questions separately.

1. Libelants contend that, if spontaneous combustion occurred, it could only have done so because of foreign impurities in the bags. Otherwise a rising temperature in the crude naphthalene itself would have caused the naphthalene to melt and consequently cool (2569) before it reached its flash point.

Libelants then contend that petitioner or respondent was negligent in allowing the use of bags soiled with impurities and in not providing sufficient ventilation so that spontaneous combustion would be prevented.

Memorandum of Dimock, D. J.

So far as evidence is concerned claimants left this issue severely alone. There is no evidence that the impurities on the material of the bags which would render naphthalene susceptible to spontaneous combustion would be discoverable on inspection. Libelants do not go to the extent of saying that the danger inherent in stowing naphthalene in second hand bags was so notorious that the petitioner or respondent should have refused to accept the cargo. They suggest that loose stowage permitting ventilation would inhibit spontaneous combustion but no evidence was offered that there was any feasible method of stowage which would have that effect. No explanation was vouchsafed as to how those responsible for the ship could permit the ventilation alleged to be necessary to inhibit spontaneous combustion and, at one and the same time, envelope the cargo with the tarpaulins alleged to be necessary to protect it from sparks and cigarette butts. I find that claimants have failed to sustain the burden of proof that the petitioner or respondent was negligent in accepting cargo in a condition susceptible to spontaneous combustion or in failing to stow it so as to inhibit spontaneous combustion.

2. In discussing this possibility of outside ignition, I shall assume, without deciding the question, that the failure to cover the stow with a tarpaulin was either negligent or in violation of a controlling statute or regulation. I therefore turn to the question whether this failure to cover the stow with a tarpaulin proximately caused the fire.

Libelant's argument that a tarpaulin would have prevented ignition from an external source runs something like this: The danger of ignition of crude naphthalene is increased by heating. As the temperature rises, greater amounts of readily-ignitable gases are given off. Since the temperature in the area of the stow was in excess of 120° F., the naphthalene was giving off a substantial

quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt. In addition, the bagging was impregnated with creosote oil from the crude naphthalene which is also readily ignitable. From these allegations libelants argue that a tarpaulin would have protected the stow from heating by the direct rays of the sun and would have prevented contact between a spark or cigarette butt and the bagging impregnated with creosote oil and gases.

(2570)

I cannot accept libelants' contention. First of all, the testimony is overwhelming that the sun's rays could not have caused or contributed to the cause of the fire. Both Dr. Purdy, respondent's expert, and Mr. Aeby whom libelants assert to be "the leading European authority on dangerous cargo", unequivocally state this conclusion. Therefore, the presence of a tarpaulin, by protecting the stow from the sun's rays, would not have prevented this fire.

Nor would a tarpaulin have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have done so only if the creosote oil and gases could not impregnate the tarpaulin or if the tarpaulin was itself not inflammable. Neither is the fact. Cargo libelants, on page 30 of their post-trial brief, allege that crude naphthalene permeates tarpaulins. Thus the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging. There is no claim that tarpaulins are not inflammable. In fact, Captain Harris, an employee of Moore-McCormack Lines, Inc., testified in both direct and cross-examination to having seen tarpaulins burn. Thus the failure to cover the stow with a tarpaulin could not have been a contributing cause of the fire.

The effect of the above discussion is that I hold that

there is no proof that the fire was caused by the negligence of either petitioner or respondent.

In deciding that petitioner and respondent have not been proved to be guilty of negligence I recognize that they are required to exercise a higher degree of care for the safety of passengers than for the safety of cargo. *Maibrunn* v. *Hamburg-American S. S. Co.*, 2 Cir., 77 F. 2d 304; *Moore* v. *American Scantic Line*, 2 Cir., 121 F. 2d 767. Nevertheless I find that libelants have not sustained the burden of proof that any faliure of petitioner or respondent to exercise the high degree of care which a carrier must devote to the safety of passengers was the proximate cause of any loss or damage.

There still remains for my decision the questions whether respondent was negligent in its attempt to extinguish the fire and whether respondent was negligent in its rescue operation.

No serious claim is made that respondent did not do everything within its power to extinguish the fire. Water was applied to the fire immediately after it was discovered and at a time when the fire was still restricted to a small area. There is no evidence which could lead me to believed that respondent's failure to extinguish the fire, after four and a half hours of fighting it, was due to any fault on its part. From the evidence, I believe that the officers and crew of the "Black Gull" did the best possible job against an unbeatable fire.

(2571)

Passenger libelants allege that the passengers were further injured due to negligent use of the lifeboats. They contend that the port lifeboat should have been lowered as soon as the severity of the fire was discovered in order to prevent its destruction. In addition, they complain of the fact that after they were ordered into the starboard lifeboat, it was keep moored to the "Black Gull". The

line became slack and the lifeboat drifted aft to the area where the fire was raging. The cause of this is unexplained but no charge of negligence is made with respect to the slackening of the mooring. The passengers allege that they were, as a result of being thus moored to the ship, scorched and forced into the water.

The reason that the master gave for not lowering the port lifeboat was that it would have required sending men into an area close to the fire. This, he felt, would have unnecessarily placed those men in a potentially dangerous situation. In addition, the starboard lifeboat had sufficient room for all members of the crew and passengers. There was, therefore, no absolute necessity for saving the port lifeboat. Once the port lifeboat was destroyed, however, it was necessary to keep the starboard lifeboat close to the vessel to take on the members of the crew if total abandonment of the vessel was ordered. Thus it was necessary to keep the lowered starboard lifeboat moored to the burning vessel at the risk of some scorching of the passengers.

I need not determine from my hindsight knowledge whether I would have followed a different plan in abandoning the vessel. I cannot say that the master's choice in not saving the port lifeboat was negligence. At that time, it was foreseeable that the fire would be extinguished. Therefore he saw no need to send men into the fire area to lower the port lifeboat. Once that lifeboat was destroyed, the master had no alternative but to keep the starboard lifeboat available to rescue all persons on board the vessel. It would have been unthinkable for him to have ordered the starboard lifeboat away from the burning vessel for the sole purpose of saving the passengers from some scorching when no other means for rescuing the crew fight the fire was available. I cannot say from where I sit that it would have been possible to keep the

(Rep. 475a-2)

CLASS.
DET NORSKE VERITAS + I.A.I. WITH FREEBOARD.

MAIN MACHINERY.
ONE GÖTAVERKEN DIESELMOTOR TYPE DM 158 V.G.9. CYL.9. 2 CYCLE, SINGLE ACTING, DIRECT REVERSIBLE, WITH SOLID INJECTION, TOTAL OUTPUT 6500 B.H.P. AT 118 R.P.M.

AUX. MACHINERY.
THREE GÖTAVERKEN DIESELGENERATORS TYP G.S. CYL.5. 4 CYCLE, SINGLE ACTING, EACH OF 300 B.H.P. AND 200 K.W. AT 350 R.P.M. ONE LISTER DIESELGENERATOR TYPE 3.2TM. CYL.3. 4 CYCLE SINGLE ACTING OF 94 B.H.P. AND 15 K.W. AT 1200 R.P.M.

FIRE EXTINGUISHING.
CO_2 FIRE EXTINGUISHING TO ALL HOLDS AND TWEENDECKS.

REFR. PLANT FOR CARGO.
OF FREON-TYPE 2 COMPRESSORS.
DELIVERED BY MESSRS. L. STERNE & CO. LTD. GLASGOW.

TONNAGE.

	NORWEGIAN	SWEDISH	PANAMA	SUEZ
GROSS TONNAGE	5000.81	6035.47	7294.10	7292.07
NET. "	2954.65	4018.60	5245.44	5215.02
UNDER DECK	4171.87	4126.61	4171.87	4119.31

CARGO CAPACITIES.

COMPARTMENT.	GRAIN CUB. MET.	GRAIN CUB. FEET	BALES CUB. MET.	BALES CUB. FEET
*1 HOLD	3386	119540	3404	120180
*2 "	1440	50860	1322	46670
*3 "	2374	84150	2333	82370
*4 "	1775	62670	1546	54590
TOTAL UNDER DECK	8123	287150	8320	293770
*1 TWEENDECK	878	34530	876	30950
*2 "	861	33590	876	31050
STRONGROOM	104	3650	88	3080
*3 TWEENDECK	387	13620	354	12490
*4 "	1153	40980	1032	36450
STRONGROOM	148	5250	131	4640
*5 TWEENDECK	1160	40980	1063	37550
AFT WELL	87	3080	77	2700
TOTAL TWEENDECK	4981	176780	4505	159420
*3 TWEENDK STORES (DEEP SPACE)	235	8300	235	8300
*5 " PORT "	235	8300	235	8300
TOTAL REFRIGERATED CARGO	470	16600	470	16600
TOTAL HOLD AND TWDK SPACES	13574	479530	13295	469790
*1 DEEPTANK STARB.	219	7730	196.8	6955
*1 " PORT	219	7730	196.8	6955
*2 " STARB.	256	9050	227.8	8039
*2 " PORT	256	9050	227.8	8039
TOTAL CARGO TANKS	950	33560	848	29940
TOTAL CARGO SPACE	14524	513090	14143	499730

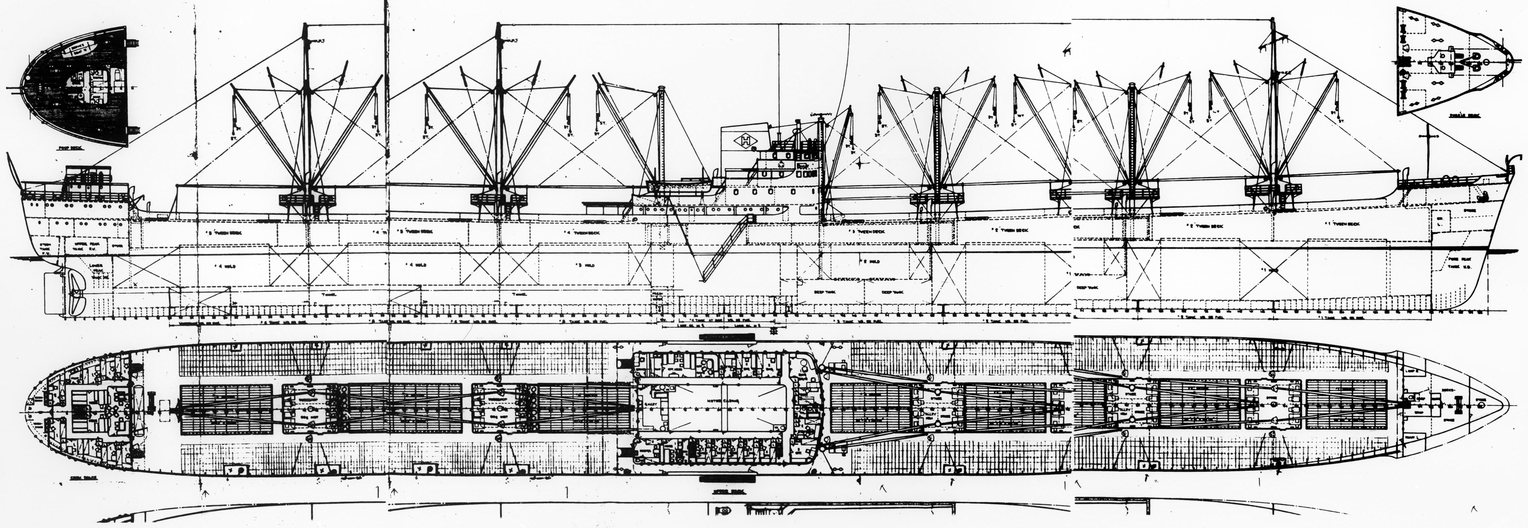
OIL BUNKERS, FRESH WATER AND WATER BALLAST CAPACITIES.

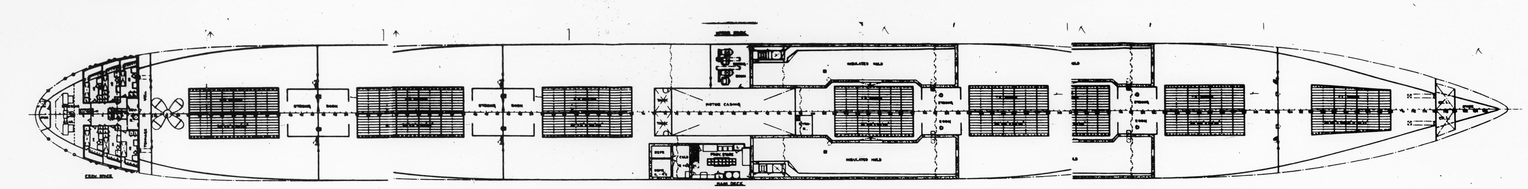
COMPARTMENT.	FRESH WATER SPEC. GRAV. 1.000 TONS	FRESH WATER SPEC. GRAV. 1.000 CUB. FEET	WATER BALLAST SPEC. GRAV. 1.025 TONS	WATER BALLAST SPEC. GRAV. 1.025 CUB. FEET	FUEL OIL SPEC. GRAV. 0.95 TONS	FUEL OIL SPEC. GRAV. 0.95 CUB. FEET
DOUBLE BOTTOM.						
*1 TANK			1214	1244	1058	
*2 " STARB.			982	1007	883	
*2 " PORT.			982	1007	883	
*3 " STARB.			1578	1617	1428	
*3 " PORT.			1578	1617	1428	
*4 " STARB.			1578	1617	1428	
*4 " PORT.			1578	1617	1428	
*5 " STARB.			1157	1186	1041	
*5 " PORT.			1157	1186	1041	
*6 " STARB.			423	433	381	
*6 " PORT.			423	433	381	
WING TANK STARB.			532	545	479	
" PORT			624	545	564	
LUBRICATING OIL TANK FRAME 88-96					243	
" " " " 74-83					243	
FRESH WATER TANK (CIRC.) " 117-122	117					
" " " " 109-113	77					
" " " " UPPER " 109-113	315					
" " " " 96-101	234					
TOTAL IN DOUBLE BOTTOM	1380.1	14145			1245.3	
FORE PEAK TANK	87.0	84.0				
AFTER "	70.0	71.7				
F.W. TANK AFT. FRAME 10-8	58.0					
STERN TANK F.W.	33.6					
TOTAL BALLAST CAPACITY		1575.4				
" BUNKER "						1245.3
*1 DEEPTANK STARB.	231.8	237.6			208.6	
*1 " PORT.	231.8	237.6			208.6	
*2 " STARB.	254.6	276.3			241.6	
*2 " PORT.	254.6	276.3			241.6	
TOTAL CARGO TANKS	1002.8	1078			952.4	

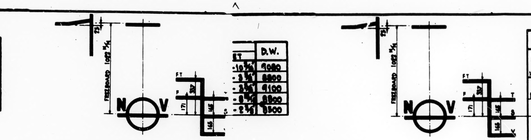
BALE CAPACITIES ARE TAKEN TO INSIDE OF PLATING AND TO UNDERSIDE OF BEAMS.
GRAIN " " " " OUTSIDE " FRAMES " " TOP " "
THESE PARTICULARS ARE BELIEVED TO BE CORRECT BUT ARE NOT GUARANTEED.

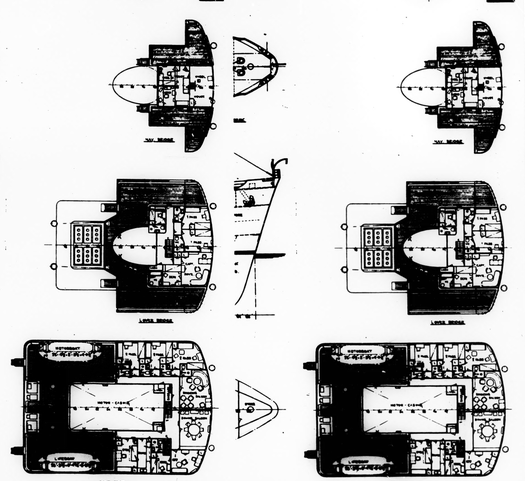
PLATING AND TO UNDERSIDE OF BEAMS.
FRAMES " " TOP " "
RECT BUT ARE NOT GUARANTEED.

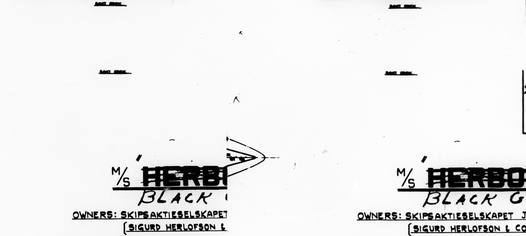
INT. LOAD LINE FREEBOARD	DRAFT METRES	DRAFT FEET	D.W.
TROPICAL FRESH WATER	8'-5"	8188	26'-10⅝"	6080
SUMMER FRESH WATER	8'-4½"	8017	26'-3⅝"	5800
TROPICAL SALT WATER	8'-4½"	8011	26'-3⅜"	6100
SUMMER SALT WATER	8'-2¼"	7846	25'-8⅝"	5800
WINTER SALT WATER	8'-0½"	7681	25'-2⅛"	5500

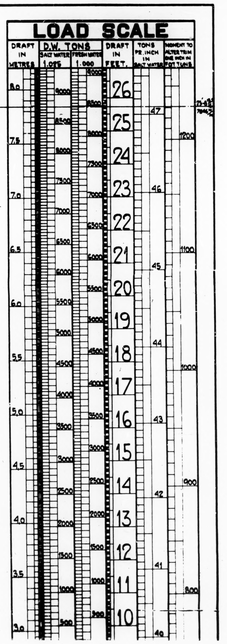












SCALE

M/S 'HERBI
BLACK
OWNERS: SKIPSAKTIESELSKAPET
[SIGURD HERLOFSON &
BUILT BY: ØRESUNDSVARVET AB.
1948.

LENGTH OVER ALL		
LENGTH BETW. P.P.		
BREADTH MOULDED		
DEPTH ---- TO SECOND DK		
DEPTH --- TO UPPER DK		
DRAFT ON SUMMERFREEBOARD		

M/S 'HERBORG'
BLACK GULL
OWNERS: SKIPSAKTIESELSKAPET JOLUND, OSLO.
[SIGURD HERLOFSON & CO. A/S]
BUILT BY: ØRESUNDSVARVET AB, LANDSKRONA, SWEDEN.
1948.

LENGTH OVER ALL	458'-5"	139.73 M
LENGTH BETW. P.P.	430'-0"	131.06 "
BREADTH MOULDED	57'-0"	17.37 "
DEPTH ---- TO SECOND DK	29'-0"	8.84 "
DEPTH --- TO UPPER DK	38'-0"	11.58 "
DRAFT ON SUMMERFREEBOARD	29'-8¾"	7.85 "

0-093-009

lifeboat at a spot far enough away for the passengers' comfort but near enough for the crews' safety.

There is therefore no negligence proved in the fighting of the fire or in the rescue operations.

I therefore grant the petition for exoneration from liability and deny libelants any recovery.

Dated: May 16 1956

E. J. DIMOCK
United States District Judge.

Amended Memorandum of Dimock, *D. J.*

#362

(2583)

[SAME TITLE]

(2584)

AMENDED MEMORANDUM

DIMOCK, *D. J.*

This controversy arises out of a fire which occurred on the Norwegian M/V "Black Gull", on July 18, 1952. As a result of this fire, the vessel became a constructive total loss and most of her cargo was either destroyed or damaged. Four members of the crew lost their lives. Other members of the crew and some of the passengers allege that they were injured and that they lost their baggage and personal effects.

Amended Memorandum of Dimock, D. J.

Four proceedings have been instituted as a result of this disaster. The first is a proceeding for exoneration from or limitation of liability instituted by Skibs A/S Jolund, owner of the "Black Gull". The second and third cases are suits for non-delivery of and damage to the cargo which was on board the "Black Gull" at the time of the fire. Libelants, in those two suits, are the owners or underwriters of that cargo. Respondent in those suits, Black Diamond Steamship Corp., was the time charterer of the "Black Gull" and issued the bills of lading for the cargo carried on that voyage. The fourth proceeding is one for wrongful death of a Belgian mess-boy, brought by his widow and children against the same respondent. I have not attempted to distinguish between libelants and claimants and for purposes of this memorandum, I have grouped both under the term "libelants" except where otherwise indicated.

There is no real dispute about the facts leading up to the disaster. The vessel left Rotterdam on July 10, 1952, bound for United States east coast ports, the first of which was to be New York. She carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp and Rotterdam. In addition, she carried on the weather deck approximately five hundred fifty tons of crude naphthalene in previously used jute or burlap bags which had been loaded in Antwerp and Rotterdam. The vessel on this voyage was manned by a crew of forty and carried nine passengers.

The crude naphthalene was stowed about six bags high. The stow covered both port and starboard sides of the afterdeck over an area of some 13-16 feet wide and approximately 90 feet long. The forward weather deck of the vessel, both port and starboard, contained an approximately similar stow of bagged crude naphthalene. In athwartship direction, the stow started just inboard of the bulwarks and continued to a line about three feet out

from the sides of the hatch coamings. A dunnage fence kept the stow clear of the bulwarks and permitted a three foot wide passageway through which members of the crew (2585) could pass. This passageway also kept sounding plugs and hose connections available to the crew. The stow was secured in place by rope nets but was otherwise uncovered.

On the evening of July 18, 1952, the vessel passed the Nantucket Shoals Light on her way to New York. At about eleven o'clock, the deck officer, standing on the starboard wing of the bridge, heard what he described as "a hollow dull dump" from the afterpart of the vessel. Looking in that direction, he saw smoke and a small flame coming from the after weather deck port side abreast number 4 hatch about 100 feet from his position on the bridge. After ordering water on deck, he went to the area in the vicinity of the smoke. He there saw fire in the middle of the top of the load and fire on the side of the load between the second and third tiers from the top.

Although an attempt was made to extinguish the fire, it was necessary to abandon the vessel about four and a half hours after the fire was discovered.

During the voyage, the temperatures ranged from a high of 77° F. to a low of 61° F. The last recording taken on the 4-8 P. M. watch on July 18th indicated a temperature of 72° F. These temperatures were taken on the bridge and therefore indicated the temperature in the shade only.

Passenger claimants stated in their brief that the fire was caused in one of two ways. They state that it was caused either by external ignition from something like a cigarette butt or spark or that it was caused by spontaneous combustion in the stow of naphthalene. They further allege that negligence of the petitioner or respondent was responsible for the disaster, whether the

physical cause of the fire was external ignition or spontaneous combustion.

In order to recover, libelants must prove that the fire was caused through design or neglect of the petitioner or respondent. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72.

Here, there are two possible causes of the fire. Passenger claimants expressly conceded this point in their brief filed subsequent to trial. While the libelants have attempted to rule out spontaneous combustion as a cause of the fire, the evidence clearly shows it to be chemically possible. There was testimony of a "hollow dull dump" immediately before the fire was discovered. Dr. Purdy, respondent's expert, testified that a fire caused by ignition from a spark or cigarette butt on the top of the stow would probably not commence with such a sound. Since the bags were packed so closely together that no crevices (2586) remained between them, it is doubtful that an outside ignition source could have found its way below the top of the stow. In addition, the location of the start of the fire lends credibility to the possibility of spontaneous combustion. The first close investigation found the fire in the middle of the top of the stow and on the side of the stow between the second and third tiers from the top. Under cross-examination by the libelants, Dr. Purdy testified that a fire which started on the top of the stow would not naturally work directly downward: rather, he stated, it would be expected to flame over the surface and through the flow of melting naphthalene to distribute the fire. On the other hand, a fire which started within the stow would naturally work out to the side at that level and work up to the top directly above it. This is exactly the position of the fire when first investigated. Thus, since a fire resulting from spontaneous combustion would start within the stow, this lends further strength to that possibility in this disaster.

Amended Memorandum of Dimock, D. J.

Dr. Purdy, the expert called by respondent, testified as to the possibility of spontaneous combustion of the bagging having caused this fire. He stated that self-heating may cause a fire in previously used bags in which impurities from prior commodities might remain. In two tests he ran involving similar bagging, some self-heating resulted. From these experiments he stated that, without definitely knowing that no impurities were present in the bags on the "Black Gull", spontaneous combustion was chemically possible. Both Dr. Purdy and Dr. Snell, the experts called by libelants, agreed that, once the bagging started to burn, the heat from the burning bagging would ignite the naphthalene.

There being no direct testimony as to an external ignition, spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire.

Libelants must prove that petitioner or respondent was negligent and that negligence was the cause of the fire whether it was started by external ignition or by spontaneous combustion. Without this proof, the fire might have been caused without any negligence on the part of petitioner. In that event, libelants would be barred from recovery. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72, supra.

There are, therefore, two questions that are immediately before me. They are: (1) If the fire was caused by spontaneous combustion, did any negligence of petitioner or respondent cause the spontaneous combustion? (2) If the fire was caused by external ignition, did the failure to cover the stow of naphthalene with a tarpaulin proximately cause the fire? I will discuss these questions separately.

(2587)

1. Libelants contend that, if spontaneous combustion occurred, it could only have done so because of foreign

impurities in the bags. Otherwise a rising temperature in the crude naphthalene itself would have caused the naphthalene to melt and consequently cool before it reached its flash point.

Libelants then contend that petitioner or respondent was negligent in allowing the use of bags soiled with impurities and in not providing sufficient ventilation so that spontaneous combustion would be prevented.

So far as evidence is concerned libelants left this issue severely alone. There is no evidence that the impurities on the material of the bags which would render naphthalene susceptible to spontaneous combustion would be discoverable on inspection. Libelants do not go to the extent of saying that the danger inherent in stowing naphthalene in second hand bags was so notorious that the petitioner or respondent should have refused to accept the cargo. They suggest that loose stowage permitting ventilation would inhibit spontaneous combustion but no evidence was offered that there was any feasible method of stowage which would have that effect. No explanation was vouchsafed as to how those responsible for the ship could permit the ventilation alleged to be necessary to inhibit spontaneous combustion and, at one and the same time, envelope the cargo with the tarpaulins alleged to be necessary to protect it from sparks and cigarette butts. I find that libelants have failed to sustain the burden of proof that the petitioner or respondent was negligent in accepting cargo in a condition susceptible to spontaneous combustion or in failing to stow it so as to inhibit spontaneous combustion.

2. In discussing this possibility of outside ignition, I shall assume, without deciding the question, that the failure to cover the stow with a tarpaulin was either negligent or in violation of a controlling statute or regulation. I therefore turn to the question whether this

failure to cover the stow with a tarpaulin proximately caused the fire.

Libelant's argument that a tarpaulin would have prevented ignition from an external source runs something like this: The danger of ignition of crude naphthalene is increased by heating. As the temperature rises, greater amounts of readily-ignitable gases are given off. Since the temperature in the area of the stow was in excess of 120° F, the naphthalene was giving off a substantial quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt. In addition, the bagging was impregnated with creosote oil from the crude naphthalene which is also readily ignitable. From these allegations libelants argue that a tarpaulin (2588) would have protected the stow from heating by the direct rays of the sun and would have prevented contact between a spark or cigarette butt and the bagging impregnated with creosote oil and gases.

I cannot accept libelants' contention. First of all, the testimony is overwhelming that the sun's rays could not have caused or contributed to the cause of the fire. Both Dr. Purdy, respondent's expert, and Mr. Aeby whom libelants assert to be "the leading European authority on dangerous cargo", unequivocally state this conclusion. Therefore, the presence of a tarpaulin, by protecting the stow from the sun's rays, would not have prevented this fire.

Nor would a tarpaulin have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have done so only if the creosote oil and gases could not impregnate the tarpaulin or if the tarpaulin was itself not inflammable. Neither is the fact. Libelants' Exhibit 38, an order issued by respondent that naphthalene must not be stowed on hatches contains the sentence "This material permeates tarpaulins and hatch boards and in a recent instance damaged cargo and necessitated re-

placement of ceiling". Thus the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging. There is no claim that tarpaulins are not inflammable. In fact, Captain Harris, an employee of Moore-McCormack Lines, Inc., testified in both direct and cross-examination to having seen tarpaulins burn. Thus the failure to cover the stow with a tarpaulin could not have been a contributing cause of the fire.

The effect of the above discussion is that I hold that there is no proof that the fire was caused by the negligence of either petitioner or respondent.

In deciding that petitioner and respondent have not been proved to be guilty of negligence I recognize that they are required to exercise a higher degree of care for the safety of passengers than for the safety of cargo. *Maibrunn* v. *Hamburg-American S. S. Co.*, 2 Cir., 77 F. 2d 304; *Moore* v. *American Scantic Line*, 2 Cir., 121 F. 2d 767. Nevertheless I find that libelants have not sustained the burden of proof that any failure of petitioner or respondent to exercise the high degree of care which a carrier must devote to the safety of passengers was the proximate cause of any loss or damage.

There still remains for my decision the questions whether respondent was negligent in its attempt to extinguish the fire and whether respondent was negligent in its rescue operation.

(2589)

No serious claim is made that respondent did not do everything within its power to extinguish the fire. Water was applied to the fire immediately after it was discovered and at a time when the fire was still restricted to a small area. There is no evidence which could lead me to believe that respondent's failure to extinguish the fire, after four and a half hours of fighting it, was due to any fault on

its part. From the evidence, I believe that the officers and crew of the "Black Gull" did the best possible job against an unbeatable fire.

Passenger libelants allege that the passengers were further injured due to negligent use of the lifeboats. They contend that the port lifeboat should have been lowered as soon as the severity of the fire was discovered in order to prevent its destruction. In addition, they complain of the fact that after they were ordered into the starboard lifeboat, it was kept moored to the "Black Gull". The line became slack and the lifeboat drifted aft to the area where the fire was raging. The cause of this is unexplained but no charge of negligence is made with respect to the slackening of the mooring. The passengers allege that they were, as a result of being thus moored to the ship, scorched and forced into the water.

The reason that the master gave for not lowering the port lifeboat was that it would have required sending men into an area close to the fire. This, he felt, would have unnecessarily placed those men in a potentially dangerour situation. In addition, the starboard lifeboat had sufficient room for all members of the crew and passengers. There was, therefore, no absolute necessity for saving the port lifeboat. Once the port lifeboat was destroyed, however, it was necessary to keep the starboard lifeboat close to the vessel to take on the members of the crew if total abandonment of the vessel was ordered. Thus it was necessary to keep the lowered starboard lifeboat moored to the burning vessel at the risk of some scorching of the passengers.

I need not determine from my hindsight knowledge whether I would have followed a different plan in abandoning the vessel. I cannot say that the master's choice in not saving the port lifeboat was negligence. At that time, it was foreseeable that the fire would be extinguished. Therefore he saw no need to send men into the

fire area to lower the port lifeboat. Once that lifeboat was destroyed, the master had no alternative but to keep the starboard lifeboat available to rescue all persons on board the vessel. It would have been unthinkable for him to have ordered the starboard lifeboat away from the burning vessel for the sole purpose of saving the passengers from some scorching when no other means for rescuing the crew fighting the fire was available. I cannot say from where I sit that it would have been (2590) possible to keep the lifeboat at a spot far enough away for the passengers' comfort but near enough for the crews' safety.

There is therefore no negligence proved in the fighting of the fire or in the rescue operations.

I therefore grant the petition for exoneration from liability and deny libelants any recovery.

Dated: July 13, 1956

E. J. Dimock
United States District Judge

Second Amended Memorandum of Dimock, *D. J.*

#366

[SAME TITLE]

(2591)

APPEARANCES:

PYNE, BRUSH, SMITH & MICHELESEN, ESQS.,
Proctors for Skibs A/S Jolund;
Warner Pyne, Esq., and
Dudley C. Smith, Esq., of Counsel.

BIGHAM, ENGLAR, JONES & HOUSTON, ESQS.,
Proctors for libelants, cargo claimants and death claimant;
Henry N. Longley, Esq., and
John W. R. Zisgen, Esq., of Counsel.

THOMAS H. WALKER, ESQ.,
Proctor for Claimant;
William J. O'Brien, Esq., of Counsel.

ABBERLEY, KOOIMAN & AMON, ESQS.,
Proctors for seven passenger claimants;
John J. Abberley, Esq., and
Frank Marcellino, Esq., of Counsel.

DOW & SYMMERS, ESQS.,
Proctors for Black Diamond Steamship Corp., respondent and claimant;
Daniel W. Stonebridge, Esq., and
Raymond W. Mitchell, Esq., of Counsel.

BARRON, RICE & ROCKMORE, ESQS.,
Proctors for Werner S. Brunn, Claimant;
Jerome L. Reinstein, Esq., of Counsel.

Second Amended Memorandum of Dimock, D. J.

(2592)

DIMOCK, *D. J.*

This controversy arises out of a fire which occurred on the Norwegian M/V "Black Gull", on July 18, 1952. As a result of this fire, the vessel became a constructive total loss and most of her cargo was either destroyed or damaged. Four members of the crew lost their lives. Other members of the crew and some of the passengers allege that they were injured and that they lost their baggage and personal effects.

Four proceedings have been instituted as a result of this disaster. The first is a proceeding for exoneration from or limitation of liability instituted by Skibs A/S Jolund, owner of the "Black Gull". The second and third cases are suits for non-delivery of and damage to the cargo which was on board the "Black Gull" at the time of the fire. Libelants, in those two suits, are the owners or underwriters of that cargo. Respondent in those suits, Black Diamond Steamship Corp., was the time charterer of the "Black Gull" and issued the bills of lading for the cargo carried on that voyage. The fourth proceeding is one for wrongful death of a Belgian mess-boy, brought by his widow and children against the same respondent. I have not attempted to distinguish between libelants and claimants and for purposes of this memorandum, I have grouped both under the term "libellants" except where otherwise indicated.

There is no real dispute about the facts leading up to the disaster. The vessel left Rotterdam on July 10, 1952, bound for United States east coast ports, the first of which was to be New York. She carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp and Rotterdam. In addition, she carried on the weather deck approximately five hundred fifty tons of

crude naphthalene in previously used jute or burlap bags which had been loaded in Antwerp and Rotterdam. The vessel on this voyage was manned by a crew of forty and carried nine passengers.

The crude naphthalene was stowed about six bags high. The stow covered both port and starboard sides of the afterdeck over an area of some 13-16 feet wide and approximately 90 feet long. The forward weather deck of the vessel, both port and starboard, contained an approximately similar stow of bagged crude naphthalene. In athwartship direction, the stow started just inboard of the bulwarks and continued to a line about three feet out from the sides of the hatch coamings. A dunnage fence kept the stow clear of the bulwarks and permitted a three foot wide passageway through which members of the crew could pass. This passageway also kept sounding plugs and hose connections available to the crew. (2593) The stow was secured in place by rope nets but was otherwise uncovered.

On the evening of July 18, 1952, the vessel passed the Nantuncket Shoals Light on her way to New York. At about eleven o'clock, the deck officer, standing on the starboard wing of the bridge, heard what he described as "a hollow dull dump" from the afterpart of the vessel. Looking in that direction, he saw smoke and a small flame coming from the after weather deck port side abreast number 4 hatch about 100 feet from his position on the bridge. After ordering water on deck, he went to the area in the vicinity of the smoke. He there saw fire in the middle of the top of the load and fire on the side of the load between the second and third tiers from the top.

Although an attempt was made to extinguish the fire it was necessary to abandon the vessel about four and a half hours after the fire was discovered.

During the voyage, the temperatures ranged from a

high of 77° F to a low of 61° F. The last recording taken on the 4-8 P. M. watch on July 18th indicated a temperature of 72° F. These temperatures were taken on the bridge and therefore indicated the temperature in the shade only.

Passenger claimants stated in their brief that the fire was caused in one of two ways. They state that it was caused either by external ignition from something like a cigarette butt or spark or that it was caused by spontaneous combustion in the stow of naphthalene. They further allege that negligence of the petitioner or respondent was responsible for the disaster, whether the physical cause of the fire was external ignition or spontaneous combustion.

In order to recover, libelants must prove that the fire was caused through design or neglect of the petitioner or respondent. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72.

Here, there are two possible causes of the fire. Passenger claimants expressly conceded this point in their brief filed subsequent to trial. While the libelants have attempted to rule out spontaneous combustion as a cause of the fire, the evidence clearly shows it to be chemically possible. There was testimony of a "hollow dull dump" immediately before the fire was discovered. Dr. Purdy, respondent's expert, testified that a fire caused by ignition from a spark or cigarette butt on the top of the stow would probably not commence with such a sound. Since the bags were packed so closely together that no crevices (2594) remained between them, it is doubtful that an outside ignition source could have found its way below the top of the stow. In addition, the location of the start of the fire lends credibility to the possibility of spontaneous combustion. The first close investigation found the fire in the middle of the top of the stow and on the side of the

stow between the second and third tiers from the top. Under cross-examination by the libelants, Dr. Purdy testified that a fire which started on the top of the stow would not naturally work directly downward; rather, he stated, it would be expected to flame over the surface and through the flow of melting naphthalene to distribute the fire. On the other hand, a fire which started within the stow would naturally work out to the side at that level and work up to the top directly above it. This is exactly the position of the fire when first investigated. Thus, since a fire resulting from spontaneous combustion would start within the stow, this lends further strength to that possibility in this disaster.

Dr. Purdy, the expert called by respondent, testified as to the possibility of spontaneous combustion of the bagging having caused this fire. He stated that self-heating may cause a fire in previously used bags in which impurities from prior commodities might remain. In two tests he ran involving similar bagging, some self-heating resulted. From these experiments he stated that without definitely knowing that no impurities were present in the bags on the "Black Gull", spontaneous combustion was chemically possible. Both Dr. Purdy and Dr. Snell, the experts called by libelants, agreed that, once the bagging started to turn, the heat from the burning bagging would ignite the naphthalene.

There being no direct testimony as to an external ignition, spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire.

Libelants must prove that petitioner or respondent was negligent and that negligence was the cause of the fire whether it was started by external ignition or by spontaneous combustion. Without this proof, the fire might have been caused without any negligence on the part of petitioner. In that event, libelants would be barred from

recovery. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72, supra.

There are, therefore, two questions that are immediately before me. They are: (1) If the fire was caused by spontaneous combustion, did any negligence of petitioner or respondent cause the spontaneous combustion? (2) if the fire was caused by external ignition, did the failure to cover the stow of naphthalene with a tarpaulin proximately cause the fire? I will discuss these questions separately.

(2595)

1. Libelants contend that, if spontaneous combustion occurred, it could only have done so because of foreign impurities in the bags. Otherwise a rising temperature in the crude naphthalene itself would have caused the naphthalene to melt and consequently cool before it reached its flash point.

Libelants then contend that petitioner or respondent was negligent in allowing the use of bags soiled with impurities and in not providing sufficient ventilation so that spontaneous combustion would be prevented.

So far as evidence is concerned libelants left this issue severely alone. There is no evidence that the impurities on the material of the bags which would render naphthalene susceptible to spontaneous combustion would be discoverable on inspection. Libelants do not go to the extent of saying that the danger inherent in stowing naphthalene in second hand bags was so notorious that the petitioner or respondent should have refused to accept the cargo. They suggest that loose stowage permitting ventilation would inhibit spontaneous combustion but no evidence was offered that there was any feasible method of stowage which would have that effect. No explanation was vouchsafed as to how those responsible for the ship

could permit the ventilation alleged to be necessary to inhibit spontaneous combustion and, at one and the same time, envelope the cargo with the tarpaulins alleged to be necessary to protect it from sparks and cigarette butts. I find that libelants have failed to sustain the burden of proof that the petitioner or respondent was negligent in accepting cargo in a condition susceptible to spontaneous combustion or in failing to stow it so as to inhibit spontaneous combustion.

2. In discussing this possibility of outside ignition, I shall assume, without deciding the question, that the failure to cover the stow with a tarpaulin was either negligent or in violation of a controlling statute or regulation. I therefore turn to the question whether this failure to cover the stow with a tarpaulin proximately caused the fire.

Libelant's argument that a tarpaulin would have prevented ignition from an external source runs something like this. The danger of ignition of crude naphthalene is increased by heating. As the temperature rises, greater amounts of readily-ignitable gases are given off. Since the temperature in the area of the stow was in excess of 120° F, the naphthalene was giving off a substantial quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt. In addition, the bagging was impregnated with creosote oil from the crude naphthalene which is also readily ignitable. From these allegations libelants argue that a tarpaulin (2596) would have protected the stow from heating by the direct rays of the sun and would have prevented contact between a spark or cigarette butt and the bagging impregnated with creosote oil and gases.

I cannot accept libelants' contention. First of all, the testimony is overwhelming that the sun's rays could not have caused or contributed to the cause of the fire. Both

Dr. Purdy, respondent's expert, and Mr. Aeby whom libelants assert to be "the leading European authority on dangerous cargo", unequivocally state this conclusion. Therefore, the presence of a tarpaulin, by protecting the stow from the sun's rays, would not have prevented this fire.

Nor would a tarpaulin have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have done so only if the creosote oil and gases could not impregnate the tarpaulin or if the tarpaulin was itself not inflammable. Neither is the fact. Libelants' Exhibit 38, an order issued by respondent that naphthalene must not be stored on hatches contains the sentence "This material permeates tarpaulins and hatch boards and in a recent instance damaged cargo and necessitated replacement of ceiling". Thus the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging. There is no claim that tarpaulins are not inflammable. In fact, Captain Harris, an employee of Moore-McCormack Lines, Inc., testified in both direct and cross-examination to having seen tarpaulins burn. Thus the failure to cover the stow with a tarpaulin could not have been a contributing cause of the fire.

The effect of the above discussion is that I hold that there is no proof that the fire was caused by the negligence of either petitioner or respondent.

In deciding that petitioner and respondent have not been proved to be guilty of negligence I recognize that they are required to exercise a higher degree of care for the safety of passengers than for the safety of cargo. *Maibrunn* v. *Hamburg-American S. S. Co.*, 2 Cir., 77 F. 2d 304; *Moore* v. *American Scantic Line*, 2 Cir., 121 F. 2d 767. Nevertheless I find that libelants have not sustained the burden of proof that any failure of petitioner or respondent to exercise the high degree of care which a carrier must devote to the safety of passengers was the proximate cause of any loss or damage.

Second Amended Memorandum of Dimock, D. J.

There still remains for my decision the questions whether respondent was negligent in its attempt to extinguish the fire and whether respondent was negligent in its rescue operation. (2597)

No serious claim is made that respondent did not do everything within its power to extinguish the fire. Water was applied to the fire immediately after it was discovered and at a time when the fire was still restricted to a small area. There is no evidence which could lead me to believe that respondent's failure to extinguish the fire, after four and a half hours of fighting it, was due to any fault on its part. From the evidence, I believe that the officers and crew of the "Black Gull" did the best possible job against an unbeatable fire.

Passenger libelants allege that the passengers were further injured due to negligent use of the lifeboats. They contend that as soon as the severity of the fire was discovered the port lifeboat should have been lowered in order to prevent its destruction. In addition, they claim that the starboard lifeboat, after they were in it, was kept moored to the "Black Gull" and that this resulted in scorching which in turn forced them into the water.

The reason that the master gave for not lowering the port lifeboat was that it would have required sending men into an area close to the fire. This, he felt, would have unnecessarily placed those men in a potentially dangerous situation. In addition, the starboard lifeboat had sufficient room for all members of the crew and passengers. There was, therefore, no absolute necessity for saving the port lifeboat. Once the port lifeboat was destroyed, however, it was necessary to keep the starboard lifeboat close to the vessel to take on the members of the crew if total abandonment of the vessel was ordered. Thus it was necessary to keep the lowered starboard lifeboat close to the burning vessel.

As a matter of fact it was not proved that keeping the lifeboat moored to the vessel resulted in the scorching and submersion. The starboard lifeboat, with the passengers in it, was let down from its davits on the midships building. It was then hauled forward in order to have it forward of the fire. The wind and sea were coming from the starboard side and the boat was shipping water. At the same time water from the fire hoses was running through the scuppers on deck down into the boat. The second officer, who was in the boat, cut the painter which moored the boat to the vessel and the members of the crew in the boat tried to get the boat clear of the ship's side. The ship had headway, however, and they were unable to get the boat far enough from it before the boat got abreast of the fire at number 4 hatch to avoid the scorching of the heat. The second officer therefore ordered all to go overboard on the lee side of the boat and hang onto the lifeline. After the boat passed number 4 hatch they all got into the lifeboat again. With only four oars in use and without rowing the lifeboat was kept near the ship. Four members of the crew (2598) thereafter jumped overboard from the ship and were picked up. Then all the rest of the crew, except the four who lost their lives, came aboard from the vessel. All in the boat were rescued by the Gripsholm.

I need not determine from my hindsight knowledge whether I would have followed a different plan in abandoning the vessel. I cannot say that the master's choice in not saving the port lifeboat was negligence. At that time, it was foreseeable that the fire would be extinguished. Therefore he saw no need to send men into the fire area to lower the port lifeboat. Once that lifeboat was destroyed, the master had no alternative but to keep the starboard lifeboat available to rescue all persons on board the vessel. Since the boat had to be kept available

it was natural to keep it moored until it appeared that the sea against the side of the vessel and the water from the scuppers were filling it. There is no suggestion that the cutting of the painter was negligent or that the failure to get far enough from the ship to avoid scorching as the boat passed number 4 hatch was negligent. Since passenger libellants' criticism is that the boat was kept moored, their position must be that it was negligent to moor the boat to the ship until it appeared that the boat was in danger of filling instead of trying to get clear of the ship as soon as the boat was in the water. There is, however, no reason to believe that, if they had tried to get clear of the ship immediately they would have been any more successful in getting away from the effective range of the fire. No attempt was made to show that the fire was any hotter when the boat finally passed it than when the boat was first launched.

There is therefore no negligence proved in the fighting of the fire or in the rescue operations.

I therefore grant the petition for exoneration from liability and deny libelants any recovery.

Dated: July 23, 1956

E. J. DIMOCK
United States District Judge

Findings of Fact and Conclusions of Law

(2647)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

[After the Court had filed its opinion in the above entitled causes, proposed findings of fact and conclusions of law were submitted by proctors for libellants and cargo claimants and death claimants Verbeeck, et al., by passenger claimants, by petitioner and by respondent. The Court indicated its disposition of each proposed finding by a marginal notation. The following are all of the findings of fact and conclusions of law made by the Court, with parenthetical references showing from which set of proposed findings and conclusions each was taken.]

FINDINGS OF FACT

1. The motor vessel "Black Gull" left Rotterdam, Netherlands, July 10, 1952, bound for United States east coast ports, the first of which was to be New York. (Lib. F.F. 1; Pet. F.F. 1; Res. F.F. 1)

2. The "Black Gull" was owned by Skibs A/S Jolund, a Norwegian corporation, and was of Norwegian Registry. (Lib. F.F. 2; Pet. F.F. 2)

Her owner was not an active ship operator; and the entire management of the ship was entrusted by the owner to Sigurd Herlofsen & Co., which executed the charter hereinafter mentioned. (Lib. F.F. 2)

Findings of Fact and Conclusions of Law

3. The "Black Gull" on the voyage in question was under time charter to Black Diamond Steamship Corp., a Maryland corporation, with an office and place of business in the City of New York. This charter was for a period of ten years, was dated September 3rd, 1949, and included, among other provisions, that "the whole reach of the Vessel's Hold, Decks, and usual places of loading" were "at the charterer's disposal"; that the vessel was to have a "full (2649) complement of officers, seamen, engineers and fireman", supplied and paid by the owners; that the cargo was to be "laden and/or discharged on any dock or at any wharf that the charterers or their Agents may direct"; that "the Captain (although appointed by the Owners) shall be under the orders and directions of the charterers as regards employment and agency"; and "the charterers are to load, stow and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for the cargo as presented". (Lib. F.F. 3; Pet. F.F. 3)

4. On the voyage leaving Rotterdam July 10, 1952, the "Black Gull" carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp, and Rotterdam (Lib. F.F. 4; Pet. F.F. 4; Res. F.F. 1) and on the weather deck she carried approximately 550 tons of crude naphthalene (Lib. F.F. 4; Pet. F.F. 4; Res. F.F. 2) which had been loaded at Antwerp and Rotterdam (Lib. F.F. 4; Pet. F.F. 7; Res. F.F. 2)

5. The naphthalene cargo was in burlap or jute bags. The bags had previously been used. (Lib. F.F. 5; Pet. F.F. 6; Res. F.F. 2)

6. The bags of naphthalene were loaded on to the "Black Gull" at Antwerp and Rotterdam by the charterer under and pursuant to the terms of the charter. (Lib. F.F. 6; Pet. F.F. 7)

7. The bags of crude naphthalene were stowed both forward and aft of the midship house on both the port and starboard sides of the weather deck. Aft on each side the stow was six bags, about 6 feet in height above the deck, 90 (2650) feet long, and about 13 to 16 feet in width; and extended from the bulwarks or side rails to about 3 feet from the hatch coamings. The stow forward was approximately the same. A fence of dunnage boards kept this stow of bagged naphthalene clear of the bulwarks and kept clear, for access by the crew, the places along the deck near the bulwarks where sounding pipes and hose connections were located. The space of about 3 feet between the inboard sides of the stow of bagged naphthalene and the hatch coamings left a fore-and-aft passageway for members of the crew. (Lib. F.F. 7; Pet. F.F. 8; Res. F.F. 3 and 4)

8. The stow of bagged naphthalene was secured in place by manila rope nets but was not otherwise covered, (Lib. F.F. 8; Pet. F.F. 9; Res. F.F. 5) and was solid or compact with no crevices or openings between the bags on top or sides. (Pet. F.F. 9)

9. The "Black Gull" on this voyage had a full complement of officers and men, (Lib. F.F. 9; Pet. F.F. 5) and in fact carried a larger complement than was required under Norwegian law. (Pet. F.F. 5) She was manned by a crew of 40 and carried 9 passengers. (Res. F.F. 6; Lib. F.F. 34)

10. On July 18, 1952 at 7:24 o'clock P. M. the "Black Gull" passed 8 miles south of Nantucket Shoals Lightship. (Lib. F.F. 10; Pet. F.F. 10)

11. At about 11:00 o'clock P. M. on the evening of July 18, 1952, the third officer, Nils Valen, who was on watch on the starboard wing of the bridge heard a sound

which he described as a "hollow, dull bump" from the after deck. Looking in the direction of the sound he saw smoke and a small (2651) flame coming from the after weather deck on the port side. (Lib. F.F. 11 as modified by Court; Pet. F.F. 13; Res. F.F. 8) At the time the "Black Gull" was proceeding toward New York at a speed of approximately 16½ knots with the wind on her port bow. (Lib. F.F. 11) Her position was 40° 30′ N, 71° W, 50 or 60 miles from the nearest point on the U. S. coast line. (Pet. F.F. 67, 68) The smoke and a little flame were at the middle of the top of the stow of the bagged naphthalene on the port side abreast No. 4 hatch. (Lib. F.F. 11 as modified by Court)

12. The third mate ran to call the master, met him in the alleyway to the master's cabin, notified him (Lib. F.F. 12; Pet. F.F. 14 as modified by Court), ordered water on deck and then went to the port side of the after part of the boat deck immediately above the weather deck and coupled fire hose to a standpipe connection on deck (Lib. F.F. 12; Pet. F.F. 14 and 15), which took but a very brief time, and then with the hose proceeded to the weather deck and to the top of No. 4 hatch to fight the fire with water. (Lib. F.F. 12 as modified by Court; Pet. F.F. 15)

13. From his position on No. 4 hatch, the third mate observed fire at the middle of the top of the stow of bags on the port side abreast No. 4 hatch. (Lib. F.F. 13; Pet. F.F. 14; Res. F.F. 9). He also saw flames burning between the second and third tiers from the top of the bags of naphthalene facing the port side of No. 4 hatch but the top tier of the bags on the port side abreast the hatch was not on fire immediately above the flames between the second and third tiers. (Lib. F.F. 13; Pet. F.F. 16 and 17; Res. F.F. 9) (2652) The first close investiga-

tion found the fire on the middle of the top of the stow alongside No. 4 hatch and on the side of the stow next to No. 4 hatch between the second and third tiers from the top. (Pet. F.F. 25 as modified by Court)

14. Despite the efforts of the crew in fighting the fire, it spread over the whole ship and it was necessary some 4½ hours later to abandon ship. (Lib. F.F. 14; Res. F.F. 10)

Petitioner did everything within its power to extinguish the fire. (Pet. F.F. 50 as modified by Court)

Water was applied to the fire immediately after it was discovered, and at a time when the fire was still restricted to a small area. (Pet. F.F. 51)

There is no evidence which would justify finding or belief that petitioner's failure to extinguish the fire, after four and a half hours of fighting the fire, was due to any fault of petitioner. (Pet. F.F. 52)

The officers and crew of the "Black Gull" did the best possible job against an unbeatable fire. (Pet. F.F. 53)

15. As a result of the fire, four members of the crew lost their lives; certain passengers sustained or alleged they sustained personal injuries and sustained loss of their baggage and personal effects; most of the cargo was either detroyed or damaged and the ship became a constructive total loss. All claims in these proceedings arose out of the fire. (Lib. F.F. 15; Pet. F.F. 11, 12; Res. F.F. 11)

16. All of the cargo of the "Black Gull" was carried under bills of lading issued by the charterer on its own be- (2653) half and on behalf of the master. (Lib. F.F. 17)

17. One of the members of the crew who died in the fire was Josef A. Verbeeck, a Belgian National, who had

signed on as a mess boy. Under Norwegian law, (which governed because the vessel was of Norwegian registry), no right of action exists in favor of his widow and children (claimants and libellants here) against those responsible for his death unless his death was caused by negligence. (Lib. F.F. 16 as modified by Court)

Among the passengers on board the vessel at the time of the fire were claimants Mr. and Mrs. Jan A. Driesprong, Wilhelmina Driesprong, Mr. and Mrs. Thomas D. Leeson, Jeannie Leeson, Jacobus de Nobel and Pieter Spaanderman. (Passenger Cl. F.F. 1)

18. There were two possible causes of the fire, namely, external ignition from something like a cigarette butt or spark or spontaneous combustion in the stow of naphthalene. (Pet. F.F. 18 as modified by Court)

19. The top surface of the naphthalene on the "Black Gull" was not protected from the elements by covered erections, structural or otherwise, and was not protected from the direct rays of the sun by means of awnings, tarpaulins or dunnaging. (Lib. F.F. 24 as modified by Court)

20. During the voyage, the temperatures ranged from a high of 77° F. to a low of 61° F. The last temperature recorded in the vessel's log book was for the 4 to 8 p. m. watch on July 18, 1952 and indicated a temperature of 72° F. These temperatures were taken on the bridge in the shade. (Pet. F.F. 20; Res. F.F. 7)

(2654)

21. The passengers were permitted on the main deck on which the naphthalene was stowed, as well as on the boat deck amidships and on the bridge deck above that. (Lib. F.F. 35)

22. The crew passed along the main deck beside the naphthalene on the way from their quarters aft to the bridge and the forward part of the vessel every watch. (Lib. F.F. 36)

23. Certain of the passengers smoked on the voyage, as did certain of the vessel's officers and crew. (Lib. F.F. 37)

24. The passengers smoked during the voyage on the weather deck, the boat deck, the sun deck and the bridge deck. The officers smoked in the chartroom and the wheel house. Some of the crew smoked on the main deck. Some of the passengers smoked on the boat deck after dinner on the evening of July 18th. (Lib. F.F. 38; Pass. Cl. F.F. 2 as modified by Court)

25. There were no receptacles on any of the decks for burned cigars, cigarettes or matches. (Lib. F.F. 39; Pass. Cl. F.F. 2)

26. The stow of naphthalene aft was uncovered and extended forward to within approximately 6 feet of the boat deck. (Pass. Cl. F.F. 3 as modified by Court)

27. As the temperature rises naphthalene gives off increasing amounts of gas. (Lib. F.F. 45 as modified by Court)

28. There was no direct testimony of external ignition. (Pet. F.F. 31)

(2655)

29. The sun's rays could not have caused or contributed to the cause of the fire. (Pet. F.F. 40 as modified by Court)

30. Tarpaulins are inflammable. (Pet. F.F. 45 as modified by Court)

31. Coverage of the stow of bagged naphthalene with a tarpaulin would not have prevented the fire on the "Black Gull." (Pet. F.F. 41)

32. A tarpaulin coverage would not have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have afforded protection only if the creosote oil or gases could not impregnate the tarpaulin or if the tarpaulin itself was not inflammable. Neither is the fact. (Pet. F.F. 42)

33. The gases given off by crude naphthalene would permeate or saturate tarpaulins which covered bagged naphthalene. (Pet. F.F. 43)

34. Creosote oil from the crude naphthalene and the gases given off by the crude naphthalene could have impregnated a tarpaulin covering bagged crude naphthalene and would thereby make the tarpaulin as inflammable as the impregnated bagging. (Pet. F.F. 44)

35. The failure to cover the bags of naphthalene on the "Black Gull" with a tarpaulin was not and could not have been a contributing cause of the fire. (Pet. F.F. 46)

36. Even if it be assumed that failure to cover the stow of bagged naphthalene with a tarpaulin was either negli- (2656) gence or in violation of controlling statute or regulation, libellants have not proved that that failure was a proximate cause of the fire. (Lib. F.F. 50 as modified by Court)

37. Pure naphthalene is not susceptible to spontaneous ignition. (Lib. F.F. 28)

38. New and empty burlap bagging is not susceptible to spontaneous ignition. (Lib. F.F. 29 as modified by Court)

39. The burlap bags in which the naphthalene on the "Black Gull" was bagged had previously been used. (Lib. F.F. 31)

40. None of the bags in which the naphthalene on the "Black Gull" was bagged was ever tested for susceptibility to spontaneous ignition. (Lib. F.F. 33)

41. There is a theoretical possibility of spontaneous ignition of the bags containing the naphthalene. (Lib. F.F. 42)

42. Spontaneous ignition could not develop on the top of the stow. (Lib. F.F. 43)

43. Spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire. (Pet. F.F. 32)

44. There had not been a lifeboat drill for more than three months prior to the disaster. (Pass. Cl. F.F. 8)

45. The Captain and officers of the vessel knew that a naphthalene fire could be extremely dangerous to the passengers and cargo. (Pass. Cl. F.F. 9)

46. The starboard lifeboat containing the passengers (2657) was not lowered into the water until one half hour after the fire was detected, and the port lifeboat was consumed by the flames. (Pass. Cl. F.F. 10)

47. The port lifeboat was constructed of wood and had an engine which was in operating condition. (Pass. Cl. F.F. 7)

48. The port lifeboat could have been launched in four or five minutes by a crew of four men. (Pass. Cl. F.F. 6)

49. The starboard lifeboat was held fast to the vessel by a rope (painter) led forward to the deck of the "Black Gull" and there made fast. (Pass. Cl. F.F. 11)

50. The rope (painter) holding the starboard lifeboat was cut and the starboard lifeboat floated back to a position along the side of the vessel where the intense heat from the fire caused pain to the passengers and caused them to get into the sea at the direction of the second mate. (Pass. Cl. F.F. 13 as modified by Court)

51. The rope (painter) was under the sole control of the officers and crew of the vessel. (Pass. Cl. F.F. 14)

52. The rope (painter) was cut from the bow of the starboard lifeboat by the Third Mate to allow the starboard lifeboat to be got free of the side of the vessel. (Pass. Cl. F.F. 15 as modified by Court)

53. It was necessary to keep starboard lifeboat close to the "Black Gull" after it was launched to take on members of the crew if total abandonment of the vessel was ordered, and it was necessary to keep the starboard lifeboat moored to the "Black Gull" for that reason, even at the risk (2658) of some scorching of passengers in that lifeboat. (Pet. F.F. 57)

54. To have lowered the port lifeboat would have required sending men into an area close to the fire, which the master of the "Black Gull" felt would unnecessarily place those men in a potentially dangerous situation. (Pet. F.F. 58)

55. The starboard lifeboat had sufficient capacity for all members of the crew and passengers, and there was therefore no absolute necessity for saving the port lifeboat. (Pet. F.F. 59)

56. The master's choice in not saving the port lifeboat cannot be said to have been negligent. (Pet. F.F. 60)

57. At the time that choice was made it was foreseeable that the fire would be extinguished, and there was therefore no need to send men into the fire area to lower the port lifeboat. (Pet. F.F. 61)

58. Once the port lifeboat was destroyed, the master had no alternative but to keep the starboard lifeboat available to rescue all persons on board the vessel. (Pet. F.F. 62)

59. The starboard lifeboat with the passengers in it was lowered from its davits on the midship building, and then hauled forward in order to have it forward of the fire. The wind and sea were coming from the starboard side, and the boat was shipping water and at the same time water from the fire hoses was running through the scuppers on deck into the boat. The second officer, who was in the lifeboat, cut the painter which moored the boat to the "Black Gull", and the members of the crew in the boat tried to get the boat clear (2659) of the ship's side, but the ship had headway and they were unable to get the boat far enough from the "Black Gull" before the boat got abreast of the fire at No. 4 hatch. The second officer therefore ordered all to go overboard on the lee side of the boat and hang on to the lifeline. After the boat passed No. 4 hatch they all got back into the lifeboat again. With only four oars in use and without rowing the lifeboat was kept near the ship. Four members of the crew thereafter

jumped overboard from the "Black Gull" and were picked up in the lifeboat, and all the rest of the crew, except the four who lost their lives, came aboard the lifeboat from the "Black Gull." All in the lifeboat were rescued by the "Gripsholm." (Pet. Rev. F.F. 63)

60. It was necessary to keep the lowered starboard lifeboat close to the burning vessel. There is no reason to believe that if they had tried to get clear of the ship immediately they would have been any more successful in getting away from the effective range of the fire. (Pet. Rev. F.F. 64 as modified by Court)

61. Libellants and claimants have not sustained the burden of establishing that petitioner or respondent negligently accepted cargo in a condition susceptible to spontaneous combustion or negligently failed to stow it so as to inhibit spontaneous combustion. (Lib. F.F. 44 as modified by Court)

62. There is no proof that the fire on the "Black Gull" was caused by negligence of the petitioner. (Pet. F.F. 47)

63. Claimants have not sustained their burden of proof of failure of the petitioner to exercise the high de- (2660) gree of care which a carrier must devote to the safety of passengers. (Pet. F.F. 48)

64. Claimants have not proven that failure to exercise a high degree of care was the proximate cause of any loss or damage. (Pet. F.F. 49)

65. There was no negligence either in the use of or the launching of the lifeboats. (Pet. F.F. 54 as modified by Court)

66. There was no negligence in failure to lower the "Black Gull's" port lifeboat as soon as the severity of the fire was discovered in order to prevent destruction of that boat. (Pet. F.F. 55 as modified by Court)

67. There was no negligence of the master or crew of the "Black Gull" in fighting the fire or in the rescue operations. (Pet. F.F. 65)

68. The stowage of the "Black Gull's" naphthalene cargo was personally planned, supervised and approved by Capt. H. Hollaar, European Marine Superintendent of respondent Black Diamond Steamship Corp. He knew that the naphthalene on deck was not covered. (Lib. F.F. 57)

69. At the time said cargo was stowed, Capt. Hollaar was in complete charge of all matters of stowage on vessels under charter to respondent, and had no superior in Europe. (Lib. F.F. 58)

70. At and before the time of the voyage here involved, it was personally known to Capt. Inge Svendsen, who assisted the head of the Marine Department of S. Herlofsen & Co., which managed the "Black Gull" for petitioner, that (2661) respondent customarily carried bagged naphthalene on deck on vessels which it chartered from petitioner, covered only by manila rope netting. (Lib. F.F. 60 as modified by Court)

71. The "Black Gull's" master did not intend to change the stowage of her naphthalene cargo prior to its discharge in United States ports. (Lib. F.F. 56)

CONCLUSIONS OF LAW

1. The "Black Gull" and petitioner and respondent were common carriers. (Lib. C.L. 1)

2. The transportation of the "Black Gull's" cargo was subject to the Carriage of Goods by Sea Act (46 U. S. C., Sec. 1300 *et seq.*). (Lib. C.L. 2)

3. As between cargo claimants and petitioner, the Fire Statute (46 U. S. C. Sec. 182) was also applicable. (Lib. C.L. 3)

4. The burden rested on cargo libellants and cargo claimants to establish that the fire resulted from the actual fault or privity of respondent or from the design or neglect of petitioner; and the burden rested on death claimants to establish that the death of Verbeeck resulted from negligence of respondent or petitioner. (Lib. C.L. 4)

5. The proximate cause of the fire aboard the M. V. "Black Gull" has not been established. (Res. C.L. 2)

6. All claimants were required to prove that the petitioner was negligent and that that negligence was the cause of the fire, whether the fire started by external ignition or by spontaneous combustion. Claimants failed in such (2662) proof. (Pet. C.L. 2)

7. The fire was not caused by the design or neglect of the petitioner and the Fire Statute is a complete defense as to all claims for cargo loss or damage. (Pet C.L. 1)

8. Claimants and libellants failed to sustain their burden of proof that the petitioner or respondent was negligent in accepting cargo in a condition susceptible to

spontaneous combustion or in failing to stow the cargo so as to inhibit spontaneous combustion. (Pet. C.L. 5; Res. C.L. 1 as modified by Court)

Any failure to detect the presence of foreign materials in bagging which might precipitate spontaneous combustion under certain temperature conditions at the time when the vessel was stowed was not a violation of any duty owed passenger libellants. (Pass. Cl. C.L. 4 as modified by Court)

9. Libellants and claimants have not sustained their respective burdens. (Lib. C.L. 5)

10. The conduct of the officers and crew of the M. V. "Black Gull" in fighting the fire was proper. (Res. C.L. 3)

11. Failure to launch the port lifeboat to assure the safety of passengers was not a violation of duty to exercise a high degree of care. (Pass. Cl. C.L. 5)

12. The cutting of the painter which moored the lifeboat to the "Black Gull" was not negligent. (Pet. C.L. 9)

13. The failure to get the lifeboat far enough away from the "Black Gull" to avoid scorching as the boat passed (2663) under No. 4 hatch was not negligent. (Pet. C.L. 10)

14. Claimants and libellants are not entitled to any recovery, and petitioner is entitled to a decree granting its petition for exoneration from liability and respondent to decrees dismissing the libels. (Lib. C.L. 6; Pet. C.L. 7)

(sgd.) EDWARD J. DIMOCK
U. S. D. J.

Final Decree

(2671)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No. A 174–34

In the Matter of
the Petition of

SKIBS A/S JOLUND, as owner of the motor ship "Black Gull", for exoneration from or limitation of liability for damages arising out of a fire on board the vessel on 18 July 1952.

A petition having heretofore and on August 7th, 1952 been filed herein by Skibs A/S Jolund, as owner of the motor ship "Black Gull", for exoneration from or limitation of liability for damages arising out of a fire on board the said motor ship on July 18th, 1952; and an order of Hon. John C. Knox, United States District Judge, having heretofore, and on August 7th, 1952 been made and entered herein for the filing of an ad interim stipulation for value by the said petitioner in the sum of $218,563; and the petitioner having filed such stipulation for value and also a stipulation for costs in the sum of $250, on both of which stipulations National Surety Corporation was surety; and the said petition for limitation of liability having thereafter and on August 21, 1952 been amended, pursuant to order of Hon. David N. Edelstein, United States District Judge; and a further order having on August 7, 1952 been made and entered herein by Hon. John C. Knox, United States District Judge, directing the issuance of a monition enjoining suits and directing filing of claims with the

Clerk of the Court; and said monition and order having been issued, and having provided and ordered that all persons having any claim against the motor ship "Black Gull" and her (2672) pending freight file their claims under oath with the Clerk of this Court on or before September 16th, 1952 or be defaulted; and notice of said monition having been given by publication in the New York Law Journal, pursuant to the order of this Court; and the said monition and citation having been duly issued, served, and published, pursuant to and in accordance with the order of this Court; and the time for filing of claims thereafter from time to time having been extended by court orders; and the time, as so extended, for the filing of all claims having expired; and notice of filing of the amended petition having been duly published, and copy of notice having been mailed pursuant to Rule 52 of the Rules and Practice in Admiralty and Maritime Cases of the United States Supreme Court, together with a copy of the said rule, as more fully appears by the affidavit of Vincent J. Ryan, sworn to September 1st, 1952 and filed herein; and numerous and sundry claims having been filed herein; and the claimants (save and except seamen members of the crew of the said motor ship "Black Gull" or next-of-kin of deceased seamen members of the crew) listed in Schedule A hereto attached and made part hereof as though herein set forth at length, having filed answers to the petition, and having contested petitioner's right to exoneration or limitation; and the issues having duly come on for trial before Hon. Edward J. Dimock, United States District Judge, and having been tried before the court on February 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27, 28, 1956; and the proctors for respective parties having argued the case, and due deliberation having been had; and an opinion and decision and amended opinions and decisions, having been duly made and filed herein; and the proctors for the petitioner and the proctors for some of the claimants who

filed answers to the petition having filed proposed (2673) findings of fact and conclusions of law; and the court having made findings of fact and conclusions of law; and under date of October 3, 1956 an order herein having been made and filed consolidating therein the said findings and conclusions; and the court having, among other matters decided, found, and concluded that the fire was not caused by the design or neglect of the petitioner, and that there was no fault or negligence of the petitioner, and that the petitioner should be exonerated from any and all liability; and the costs and disbursements of the petitioner having been duly taxed in the sum of $2,602.25

Now, on the pleadings and proceedings herein and the evidence adduced at the trial, and the opinions and decisions filed herein, and the findings of fact and conclusions of law made and filed herein; and on motion of Pyne, Brush, Smith & Micheisen, proctors for the petitioner, it is

ODERED, ADJUDGED, AND DECREED:

(1) That the defaults of all persons and corporations who may have sustained any loss, destruction, damage, or injury caused by or arising out of the fire which occurred on the motor ship "Black Gull" on July 18th, 1952, and who have not heretofore filed claims in these proceedings, be and they hereby are noted and entered; and

(2) That the filing or presentation hearafter of any claim or answer in these proceedings, and the bringing of any action or suit, at law, in admiralty, in equity, or the presentation or making of any claim or demand, in any court or any tribunal or in any manner or place, anywhere, against the said motor vessel "Black Gull" or against (2674) the petitioner Skibs A/S Jolund, be forever barred,

enjoined and restrained, and all persons or corporations be and they hereby are perpetually enjoined and restrained from bringing any suit or action or making any claim arising out of loss, damage, death, or injury caused or alleged to have been caused, or arising or alleged to have arisen out of said fire; and

(3) That the fire on board the motor ship "Black Gull" which occurred on July 18th, 1952, and any and all loss, destruction, damage, deaths, or injuries resulting therefrom or caused thereby, were done, occasioned, and occurred without the privity or knowledge of, and without design or neglect of, and without fault or liability on the part of, petitioner Skibs A/S Jolund, or the said motor ship "Black Gull", or those in charge of the said motor ship; and

(4) That the petitioner Skibs A/S Jolund and the motor ship "Black Gull" be and they are hereby forever exempted, exonerated, and discharged from any and all liability for any and all claims for loss, destruction, damage, death, or injury arising out of the aforesaid fire; and

(5) That all claims filed herein be and they are hereby dismissed and disallowed on the merits; and

(6) That the petitioner Skibs A/S Jolund recover from each of the claimants listed in Schedule A hereto attached who contested petitioner's right to exoneration from or limitation of liability and their stipulators for costs the sum of $18.20 each, so that each of said claimants and their stipulators for costs shall be liable for 1/143rd of petitioner's costs and disbursements as taxed, with interest from the date of this decree until paid; and

(2675)

(7) That unless the payment hereinbefore prescribed and ordered be made, the stipulators for costs on behalf of the respective claimants shall cause the engagement of their stipulators to be performed, or show cause upon a notice of five (5) days why execution should not issue against them, their goods, chattels, and lands; and

(8) That on the filing herein of an ad interim stipulation for value executed by the petitioner Skibs A/S Jolund as principal, and by Assuranceforeningen Gard, of Arendal, Norway, as surety, in the sum of $218,563, with interest from the 18th day of July 1952, the ad interim stipulation for value dated the 5th day of August 1952 heretofore filed herein in the sum of $218,563 on which National Surety Corporation is surety be cancelled and discharged of record.

E. J. DIMOCK
U. S. D. J.

Dated: New York, New York
November 27, 1956.

SCHEDULE "A", ANNEXED TO FINAL DECREE

(2676)

American Smelting & Refining Company
Atkinson Haserick & Co.
Anglo Fabrics Company, Inc.
Frederick E. Aubel, Jr. & Frederick E. Aubel, III, co-partners doing business under the firm name of F. & E. Aubel.
Olaf Ravndal as treasurer of American Express Company, an unincorporated association of more than 7 persons.
Atalanta Trading Corporation.

Schedule "A", Annexed to Final Decree

Archer-Daniels-Midland Company
Ameurope Metals, Inc.
Ernest Adler Co., Inc.
American Overocean Corporation.
Associated Metals & Minerals Corporation.
Stanley Wallach doing business as The Atlantic Works.
Beatty & Hyde, Inc.
Bracht & Co., Inc.
The Baker Castor Oil Company
Browning Chemical Corporation
Bell Telephone Manufacturing Company, S. A.
Budde & Westerman
D. Benedetto, Inc.
Baloise Marine Insurance Company, Ltd.
Cordingley Company
Capital Airlines
Columbia Export Co. Inc.
Colonial Mirror & Glass Corp.
Frederick H. Cone & Co., Inc.
Cosa Corporation
Ezl. Dunwoody Co.
Dickerson's Overseas Company, a Division of the Dickerson Company, Inc.

(2677)

A. de Swaan, Inc.
Delmey Trading Corporation
The Enterprise Manufacturing Company of Pennsylvania
A. L. Erlanger Co. Inc.
J. Eisenberg, Inc.
European Chemical Co., Inc.
Wm. S. Febiger Co. & Intercontinental Wool Co.
Robert S. Fish & Co., Inc.
Federal Liquors, Ltd.
Lewis C. Franklin & Lewis C. Franklin, Jr. co-partners doing business under the firm name and style of Franklin & Co.

Schedule "A", Annexed to Final Decree

Frieman Knitwear Corporation
Federated Department Stores, Inc. The F. & R. Lazarus & Company, Div.
Fein & Co., Inc.
B. S. Bergensen & Jorgen Krag, co-partners doing business under the firm name and style of Frosty Foods Company.
Frank A. G.
Andrew Fisher Cycle Co., Inc.
Fallani & Cohn Co. Inc.
Garden Supply Sales Corporation
Gotaas Export Corporation
Robert A. Hurley & Co. Inc.
Richard W. Homer doing business under the firm name and style of Richard W. Homer Company.
A. H. Helmig & Co., Inc.
Frank B. Healis & Co., Inc.
Hohenberg Co., Inc.
Industrial Sales Corporation
Innis Speiden & Co., Inc.
Imperial International Corporation

(2678)

Imex, S. A.
Import-Export Industries, Inc.
International Expediters, Inc.
Interstate Casing Corporation
J. M. Trading Corporation
Jacky Maeder & Co.
Robt. Jowitt & Sons, Ltd.
Kreglinger, Inc.
H. M. Koeningswerther, Inc.
Albert Kremper
Fred H. Lenway & Co., Inc.
Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon,

Schedule "A", Annexed to Final Decree

Henry Parish II, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Hebert Higgins, and Samuel L. Stedman, co-partners doing business under the firm name and style of Carl M. Loeb Rhoades & Company.

Lador S. A.
Maryland Trading Corporation
Munro Kincaid Mottla, Inc.
Mandel Brothers, Inc.
Marble Supply Corporation of America
Monsanto Chemical Co.
Marum Knitting Mills, Inc.
Metasco, Inc.
Mitropa Corporation
Miller Products Export Corporation
Merino Wool Corporation
Modern Exportation
Harry Liebowitz doing business as Modern Glass & Wire Supply Company.

(2679)

Mercaderial Peruanas S. A.
Meyerhans & Cie. S. A.
Establissements Francois Masurel Freres
Norge Boats, Inc.
John E. Murray & Charles S. Nicholson co-partners doing business under the firm name and style of Nicholson & Company.
North & Central American Hide Corporation
New Amsterdam Import Co., Inc.
Richard M. Ott & Sons, Inc.
Otis McAllister & Co.
O'Neill Brothers, Inc.
Parker Machine Co., Inc.
Paper Corporation of United States

Schedule "A", Annexed to Final Decree

Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim & George T. Beattie as trustees of Henry W. Peabody & Co., Association, A Massachusetts Voluntary Trust

Pojhola Insurance Company

William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell R. Longshore co-partners doing business under the firm name and style of I. Reifsnyder Son & Co.

Joseph Rosenthal's Sons Inc.

S. Rosenfelder & Son, Inc.

Reliance International Manufacturing Co.

Walter H. Rothschild & Co., Inc.

S. K. F. Industries, Inc.

Irving M. Sobin Co., Inc.

Jos. Sultan & Sons, Inc.

Paul A. Straub & Co. Inc.

E. Richard Schwabach, Julius Schure, N. W. Feingold, Paul D. Perutz, George J. Perutz and Fred W. Perutz, co-partners doing business under the firm name and style of Schwabach & Company.

(2680)

Christopher Smiles & Co., Inc.

F. Schumacher & Co.

George Scherr & Co., Inc.

William Steck & Co. Inc.

Standard Sales Steel Co. Inc.

J. Shore & Co.

R. K. Sterling & Maude A. Sterling co-partners doing business under the firm name and style of D. L. Sterling & Sons

A. Samyn Permandt

Societe des Mines et. Fonderies de Zinc de la Vieille Montagne (S. A.)

Stein Hall & Co., Inc.

Schedule "A", Annexed to Final Decree

Switzerland General Insurance Company, Ltd.
William T. Newbold & James M. Reilly co-partners doing business under the firm name and style of Nathan Trotter & Co.
F. H. Taussig
The Travelers Fire Insurance Company
Touraine Flowers, Inc.
United Hat Fur Cutting Company
Bernhard Ullmann & Co., Inc.
Ullmann-Allied Overseas Associates Ltd.
Union des Fabriques Belges de Textiles Artificiels S. A.
Firma J. van Beelen c. v.
C. J. Van Houten & Zoon n. v.
Western Dairy Products, Inc.
S. H. Waldstein Co., Inc.
Wool Distributing Corporation
George Wertheimer
W. W. Windle Company
Rembert Wurlitzer
Theodore Willich, Albert Willich & Anton F. Dolce, co-partners doing business under the firm name and style of Willich & Company and
David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners doing business under the firm name and style of Samuel Zeitlin's Sons.

(2681)

Jan A. Driesprong
Janna Driesprong
Wilhemina Dreisprong
Thomas D. Leeson
Jeanne Leeson
Jacobus De Nobel
Pieter Spaanderman
Wurttembergische und Badische Vereinigte Versicherungsgesellschaften A. G.
United Fruit Company

Claimants' Notice of Appeal

(2682)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A. 174-34

In the Matter of the Petition

of

SKIBS A/S JOLUND,

as owner of the M. S. "Black Gull", for exoneration from or limitation of liability.

Sirs:

PLEASE TAKE NOTICE that claimants:

Atkinson Haserick & Company; Anglo Fabrics Co. Inc.; Frederick E. Aubel, Jr. and Frederick E. Aubel, III, co-partners d/b/u the firm name and style of F. & E. Aubel; Olaf Ravndal, as Treasurer of American Express Company; Atalanta Trading Corp.; Archer-Daniels-Midland Company; Ameurope Metals, Inc.; Ernest Adler Co. Inc.; American Overocean Corporation; Associated Metals & Minerals Corporation; Stanley Wallach d/b/a The Atlantic Works; Beatty & Hyde, Inc.; Bracht & Co., Inc.; The Baker Castor Oil Company; Browning Chemical Corporation; Budde & Westermann; D. Benedetto Inc; Baloise Marine Insurance Company, Ltd.; Cordingly Company; Capital Airlines; Columbia Export Co., Inc.; Colonial Mirror & Glass Corp.; Cosa Corporation; Ezl. Dunwoody Co.; A. DeSwaan Inc.; Delmey Trading Corporation; The Enterprise Manufacturing Company of Pa.; A. L. Erlanger

Company Inc.; J. Eisenberg, Inc.; European Chemical Co. Inc.; Wm. S. Febiger Co. and Intercontinental Wool Company; Robert S. Fish & Co. Inc.; Federal Liquors, Ltd.; Lewis C. Franklin and Lewis C. Franklin, Jr., Co-partners d/b/u firm name & style of Franklin & Company; Friemen Knitwear Corporation; Federated Department Stores Inc., The F. & R. Lazarus & Company Division; Fein & Co. Inc.; B. S. Bergesen & Jorgen Krag, Co-partners d/b/u firm name & style of Frosty Foods Company; Frank A. G.; Andrew Fisher Cycle Co. Inc.; Fallani & Cohn Inc.; Garden Supply Sales Corporation; Gotaas Export Corp.; Robert A. Hurley & Co. Inc.; Richard W. Homer d/b/a Richard W. Homer & Company; A. H. Helmig & Co. Inc.; Frank B. Healis & Co Inc.; Hohenberg Co. Inc.; Industrial Sales Corporation; Innis, Speiden & Co. Inc.; Imperial International Corp.; Imex S. A.; Import-Export Industries Inc.; International Expediters Inc.; Interstate Casing Corp.; J. M. Trading Corp.; Jacky Maeder & Co.; Robt. Jowitt & Sons Ltd.; Kreglinger, Inc.; H. M. Koenigswerther Inc.; Lador S. A.; Fred H. Lenway & Co. (2683) Inc.; Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erff, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish 2d, Samuel L. Horastein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Herbert Higgins, Samuel L. Stedman, co-partners d/b/u the firm name and style of Carl M. Loeb, Rhoades & Company; Maryland Trading Corporation; Munro Kincaid Mottla Inc.; Mandel Brothers Inc.; Marble Supply Corporation of America; Monsanto Chemical Company; Marum Knitting Mills Inc.; Metasco, Inc.; Mitropa Corporation; Miller Products Export Corp.; Merino Wool Corporation; Modern Exportation; Harry Liebowitz, an individual doing business as Modern Glass & Wire Supply Company; Mercaderias Peruanas S A.; Meyerhans & Cie. S. A.; Etablissement Francois Masurel Freres; Norge

Boats Inc.; John E. Murray and Charles S. Nicholson, co-partners d/b/u the firm name & style of Nicholson & Company; North & Central American Hide Corporation; New Amsterdam Import Co. Inc.; Richard M. Ott & Sons, Inc.; Otis McAllister & Co.; O'Neill Brothers Inc.; Parker Machine Co., Inc.; Paper Corporation of United States; Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie, as Trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust; Pohjola Insurance Company; William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry F. Orlemann, Jr. and Russell E. Longshore, co-partners d/b/u the firm name and style of I. Reifsnyder Son & Co.; S. Rosenfelder & Son Inc.; Reliance International Manufacturing Co.; Walter H. Rothschild & Company, Inc.; S K F Industries Inc.; Irving M. Sobin Co. Inc.; Jos. Sultan & Sons Inc.; Paul A. Straub & Co. Inc.; E. Richard Schwabach, Julius Schure, M. W. Feingold, Paul D. Perutz, George J. Perutz, Fred W. Perutz, co-partners d/b/u the firm name and style of Schwabach & Company; Christopher Smiles & Co., Inc.; F. Schumacher & Co.; George Scherr Co. Inc.; William Steck & Co. Inc.; Standard Sales Steel Co. Inc.; J. Shore & Co.; R. K. Sterling and Maude A. Sterling, co-partners d/b/u the firm name and style of D. L. Sterling & Sons; A. Samyn Permandt; Societe Des Mines Et Fonderies De Zinc De La Vieille Montagne (S. A.); Stein, Hall & Company, Inc.; Switzerland General Insurance Company, Ltd.; F. H. Taussig; The Travelers Fire Insurance Company; Touraine Flowers Inc.; United Hat Fur Cutting Company; Bernhard Ulmann Co. Inc.; Ullmann-Allied Overseas Associates, Ltd.; Union DesFabriques Belges De Textiles Artificiels S. A.; Western Dairy Products Inc.; S. H. Waldstein Co. Inc.; Wool Distributing Corporation; Georg Wertheimer; W. W. Windle Company; Rembert Wurlitzer; Theodore Willich, Albert Willich and Anton F. Dolce, co-partners

d/b/u the firm name and style of Willich & Company; David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners d/b/u the firm name and style of Samuel Zeitlin's Sons; B. N. S. International Sales Corp.; W. L. M. Bensdorp Company; N. V. Tweka Tricotfabrieken; Duesberg-Bosson Machines Textiles S. P. R. L; Charles Censor; Garnindustrie G. M. B. H.; A/S Dansk Kodekstrakt Co. Aabenraa; Andels-Svineslagteriet i Kolding; United Nations; Edward S. Blake and "John" Boyle (the name "John" being fictitious, the true given name of said person being unknown) co-partners d/b/u the firm name and style of Blake & Boyle

(2684)

appeal to the United States Court of Appeals for the Second Circuit from the Final Decree entered herein on the 27th day of November, 1956, and from each and every part of said Decree.

Dated: New York, N. Y.
December 14, 1956.

Yours, etc.,

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Claimants
Office & P. O. Address:
99 John Street
New York 38, N. Y.

To:

HERBERT A. CHARLTON, Esq.,
Clerk of the United States
District Court for the Southern
District of New York

PYNE, BRUSH, SMITH & MICHELSON, Esqs.,
Proctors for Petitioner
116 John Street
New York 38, N. Y.

ABBERLEY, KOOIMAN & AMON, Esqs.
Proctors for Claimants
55 Liberty Street
New York, N. Y.

THOMAS H. WALKER, Esq.,
Proctor for Claimant
Pier 9, North River
New York, N. Y.

BARRON, RICE & ROCKMORE, Esq.
Proctors for Claimant
10 East 40th Street
New York, N. Y.

JACOB RASSNER, Esq.,
Proctor for Claimant
15 Park Row
New York, N. Y.

COOPER, OSTRIM & DEVARCO, Esqs.
Proctors for Claimant
655 Madison Avenue
New York, N. Y.

DOW & STONEBRIDGE Esqs.
Proctors for Claimant
70 Pine Street
New York, N. Y.

Assignments of Error

(2686)

A 174–34

[SAME TITLE]

Appellants:

Atkinson Haserick & Company; Anglo Fabrics Co. Inc.; Frederick E. Aubel, Jr. and Frederick E. Aubel, III, co-partners d/b/u the firm name and style of F. & E. Aubel; Olaf Ravndal, as Treasurer of American Express Company; Atalanta Trading Corp.; Archer-Daniels-Midland Company; Ameurope Metals, Inc.; Ernest Adler Co. Inc.; American Overocean Corporation; Associated Metals & Minerals Corporation; Stanley Wallach d/b/a The Atlantic Works; Beatty & Hyde, Inc.; Bracht & Co., Inc.; The Baker Castor Oil Company; Browning Chemical Corporation; Budde & Westermann; D. Benedetto Inc.; Baloise Marine Insurance Company, Ltd.; Cordingley Company; Capital Airlines; Columbia Export Co., Inc.; Colonial Mirror & Glass Corp.; Cosa Corporation; Ezl. Dunwoody Co.; A. DeSwaan Inc.; Delmey Trading Corporation; The Enterprise Manufacturing Company of Pa.; A. L. Erlanger Company Inc.; J. Eisenberg, Inc.; European Chemical Co. Inc.; Wm. S. Febiger Co. and Intercontinental Wool Company; Robert S. Fish & Co. Inc.; Federal Liquors, Ltd.; Lewis C. Franklin and Lewis G. Franklin, Jr., co-partners d/b/u firm name and style of Franklin & Company; Frieman Knitwear Corporation; Federated Department Stores Inc., The F. & R. Lazarus & Company Division; Fein & Co. Inc.; B. S. Bergesen & Jorgen Krag, co-partners d/b/u firm name & style of Frosty Foods Company; Frank A. G.; Andrew Fisher

Cycle Co. Inc.; Fallani & Cohn Inc.; Garden Supply Sales Corporation; Gotaas Export Corp.; Robert A. Hurley & Co. Inc.; Richard W. Homer d/b/a Richard W. Homer & Company; A. H. Helmig & Co. Inc.; Frank B. Healis & Co. Inc.; Hohenberg Co. Inc.; Industrial Sales Corporation; Innis, Speiden & Co. Inc.; Imperial International Corp.; Imex S. A.; Import-Export Industries Inc.; International Expediters Inc.; Interstate Casing Corp.; J. M. Trading Corp.; Jacky Maeder & Co.; Robt. Jowitt & Sons Ltd.; Kreglinger, Inc.; H. M. Koenigswerther Inc.; Lador S. A.; Fred H. Lenway & Co. Inc.; Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish, 2d, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, (2687) Frederick T. Koyle, J. Herbert Higgins, Samuel L. Stedman, co-partners d/b/u the firm name and style of Carl M. Loeb, Rhoades & Company; Maryland Trading Corporation; Munro Kincaid Mottla Inc.; Mandel Brothers Inc.; Marble Supply Corporation of America; Monsanto Chemical Company; Marum Knitting Mills Inc.; Metasco, Inc.; Mitropa Corporation; Miller Products Export Corp.; Merino Wool Corporation; Modern Exportation; Harry Liebowitz, an individual doing business as Modern Glass & Wire Supply Company; Mercaderias Peruanas S. A.; Meyerhans & Cie. S. A.; Etablissement Francois Masurel Freres; Norge Boats Inc.; John E. Murray and Charles S. Nicholson, co-partners d/b/u the firm name & style of Nicholson & Company; North & Central American Hide Corporation; New Amsterdam Import Co. Inc.; Richard M. Ott & Sons, Inc.; Otis McAllister & Co.; O'Neill Brothers Inc.; Parker Machine Co., Inc.; Paper Corporation of United States; Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie, as Trustees of Henry W. Peabody & Co., Associa-

tion, a Massachusetts Voluntary Trust; Pohjola Insurance Company; William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell E. Longshore, co-partners d/b/u the firm name and style of I. Reifsnyder Son & Co.; S. Rosenfelder & Son Inc.; Reliance International Manufacturing Co.; Walter H. Rothschild & Company, Inc.; S K F Industries Inc.; Irving M. Sobin Co. Inc.; Jos. Sultan & Sons Inc.; Paul A. Straub & Co. Inc.; E. Richard Schwabach, Julius Schure, M. W. Feingold, Paul D. Perutz, George J. Perutz, Fred W. Perutz, co-partners d/b/u the firm name and style of Schwabach & Company; Christopher Smiles & Co., Inc.; F. Schumacher & Co.; George Scherr Co. Inc.; William Steck & Co. Inc.; Standard Sales Steel Co. Inc.; J. Shore & Co.; R. K. Sterling and Maude A. Sterling, co-partners d/b/u the firm name and style of D. L. Sterling & Sons; A. Samyn Permandt; Societe Des Mines Et Fonderies De Zinc De La Vieille Montagne (S. A.); Stein, Hall & Company, Inc.; Switzerland General Insurance Company, Ltd.; F. H. Taussig; The Travelers Fire Insurance Company; Touraine Flowers Inc.; United Hat Fur Cutting Company; Bernhard Ulmann Co. Inc.; Ullmann-Allied Overseas Associates, Ltd.; Union Des Fabriques Belges De Textiles Artificiels S. A.; Western Dairy Products Inc.; S. H. Waldstein Co. Inc.; Wool Distributing Corporation; Georg Wertheimer; W. W. Windle Company; Rembert Wurlitzer; Theodore Willich, Albert Willich and Anton F. Dolce, co-partners d/b/u the firm name and style of Willich & Company; David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners d/b/u the firm name and style of Samuel Zeitlin's Sons; B. N. S. International Sales Corp.; W. L. M. Bensdorp Company; N. V. Tweka Tricotfabrieken; Duesberg-Bosson Machines Textiles S. P. R. L.; Charles Censor; Garnindustrie G. M. B. H.; A/S. Dansk

Kodekstrakt Co. Aabenraa; Andelssvineslagteriet i Kolding; United Nations; Edward S. Blake and "John" Boyle (the name "John" being fictitious, the true given name of said person being unknown) co-partners d/b/u the firm name and style of Blake & Boyle

(2688)

hereby assign error to the opinions, findings of fact and conclusions of law, and to the decree of the United States District Court for the Southern District of New York in this cause, as follows:

1. In that the District Court failed and refused to find that the stowage of the "Black Gull's" naphthalene cargo was negligent.

2. In that the District Court failed and refused to find that the negligent stowage of her naphthalene cargo was causally related to the fire and the damage resulting therefrom.

3. In that the District Court failed and refused to hold that the law of the United States forbade transportation of the "Black Gull's" naphthalene cargo excepting in accordance with the regulations of the United States Coast Guard.

4. In that the District Court failed and refused to hold that the regulations of the United States Coast Guard required that the "Black Gull's" naphthalene cargo, stowed on deck, be stowed "protected" or "under cover", as defined by the Coast Guard regulations.

5. In that the District Court failed and refused to hold that the United States Coast Guard regulations required that "Black Gull's" naphthalene cargo, stowed on deck, be

inspected daily in the course of the voyage for evidence of spontaneous heating.

6. In that the District Court failed and refused to find that the "Black Gull's" naphthalene cargo was stowed in violation of the regulations of the United States Coast Guard.

(2689)

7. In that the District Court failed and refused to find that at the time the "Black Gull's" naphthalene cargo was stowed at Rotterdam there was in effect a regulation of the Government of the Kingdom of the Netherlands governing its stowage.

8. In that the District Court failed and refused to find that at the time the naphthalene cargo of the "Black Gull" was stowed at Rotterdam its stowage violated the applicable regulation.

9. In that the District Court failed and refused to hold that the regulations of the United States Coast Guard, even if inapplicable with statutory force, established a standard of care for the stowage of naphthalene.

10. In that the District Court failed and refused to find that the regulation of the Kingdom of the Netherlands in effect at the time the "Black Gull's" deck cargo of naphthalene was stowed at Rotterdam established a standard of care for the stowage of such cargo.

11. In that the District Court failed and refused to find that the stowage of the "Black Gull's" deck cargo of naphthalene fell short of the standard of care established by the regulations of the United States Coast Guard, and was negligent.

Assignments of Error

12. In that the District Court failed and refused to find that the stowage of the "Black Gull's" deck cargo of naphthalene fell short of the standard of care established by the Dutch regulation, and was negligent.

13. In that the District Court failed and refused to find that the stowage of the "Black Gull's" deck cargo of naphthalene created a situation fraught with the danger of fire.

(2690)

14. In that the District Court failed and refused to find that, as stowed, the "Black Gull" was unseaworthy for the voyage contracted for in the bills of lading; and that that unseaworthiness existed because due diligence was not exercised to make her seaworthy.

15. In that the District Court found that the fire on the "Black Gull" may have resulted from spontaneous ignition of her naphthalene cargo.

16. In that the District Court failed and refused to find that the fire on the "Black Gull" resulted from ignition of her naphthalene cargo from an external source.

17. In that the District Court failed and refused to find that stowage of the "Black Gull's" deck cargo of naphthalene "protected" or "under cover", as defined in the United States Coast Guard Regulations, was designed to and would have eliminated the danger of the fire which occurred.

18. In that the District Court held that both death claimants and cargo owners must negative a theoretical but improbable possibility of the fire if that theoretical possibility might exempt the appellees from liability.

BIGHAM, ENGLAR, JONES & HOUSTON
Proctors for Claimants

Final Decree in American Smelting & Refining Company, et al.

(2894)

A. 178–342

In a stated term of the United States District Court for the Southern District of New York, held at the Court House, New York, New York on the 27 day of November, 1956.

Present: THE HONORABLE E. J. DIMOCK, *District Judge.*

[SAME TITLE]

This cause having come on to be heard in its regular order on February 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27 and 28, 1956 upon the pleadings and proof, and having been argued and submitted by the advocates of the respective parties, and the court, after due deliberation, having rendered its opinion in writing and directing a decree dismissing the libel herein with costs and the respondents costs having been duly taxed at the sum of $1,212.70.

Now, on motion of Dow & Symmers, proctors for the respondents, it is

ORDERED, ADJUDGED AND DECREED that the libel herein be and the same hereby is dismissed on the merits and the respondents Black Diamond Steamship Corporation and Black Diamond Lines Inc. recover of the libellants and their stipulators for costs the sum of $1,212.70, costs as taxed, which sum shall bear interest from the date of this decree until (2895) paid and that the respondents have judgment and execution against the said libellants therefor.

E. J. DIMOCK
U. S. D. J.

Notice of Appeal of Libellants Atkinson Haserick & Company, et al.

(2899)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A. 178–342

AMERICAN SMELTING AND REFINING COMPANY, et al.,

Libellants,

—against—

BLACK DIAMOND STEAMSHIP CORP. and BLACK DIAMOND LINES, INC.,

Respondents.

Sirs:

PLEASE TAKE NOTICE that libellants:

Atkinson Haserick & Company; Anglo Fabrics Co. Inc.; Frederick E. Aubel, Jr. and Frederick E. Aubel, III, co-partners d/b/u the firm name and style of F. & E. Aubel; Olaf Ravndal, as Treasurer of American Express Company; Atalanta Trading Corp.; Archer-Daniels-Midland Company; Ameurope Metals, Inc.; Ernest Adler Co. Inc.; American Overocean Corporation; Associated Metals & Minerals Corporation; Stanley Wallach d/b/a The Atlantic Works; Beatty & Hyde, Inc.; Bracht & Co., Inc.;

Notice of Appeal of Libellants Atkinson Haserick & Company, et al.

The Baker Castor Oil Company; Browning Chemical Corporation; Budde & Westermann; D. Benedetto Inc.; Baloise Marine Insurance Company, Ltd.; Cordingley Company; Capital Airlines; Columbia Export Co., Inc.; Colonial Mirror & Glass Corp.; Cosa Corporation; Ezl. Dunwoody Co.; A. DeSwaan Inc.; Delmey Trading Corporation; The Enterprise Manufacturing Company of Pa.; A. L. Erlanger Company Inc.; J. Eisenberg, Inc.; European Chemical Co. Inc.; Wm. S. Febiger Co. and Intercontinental Wool Company; Robert S. Fish & Co. Inc.; Federal Liquors, Ltd.; Lewis C. Franklin and Lewis C. Franklin, Jr., co-partners d/b/u firm name & style of Franklin & Company; Frieman Knitwear Corporation; Federated Department Stores Inc., The F. & R. Lazarus & Company Division; Fein & Co. Inc.; B. S. Bergesen & Jorgen Krag, co-partners d/b/u firm name & style of Frosty Foods Company; Frank A. G.; Andrew Fisher Cycle Co. Inc.; Fallani & Cohn Inc.; Garden Supply Sales Corporation; Gotaas Export Corp.; Robert A. Hurley & Co. Inc.; Richard W. Homer d/b/a Richard W. Homer & Company; A. H. Helmig & Co. Inc.; Frank B. Healis & Co. Inc.; Hohenberg Co. Inc.; Industrial Sales Corporation; Innis, Speiden & Co. Inc.; Imperial International Corp.; Imex S. A.; Import-Export Industries Inc.; International Expediters Inc.; Interstate Casing Corp.; J. M. Trading Corp.; Jacky Maeder & Co.; Robt. Jowitt & Sons Ltd.; Kreglinger, Inc.; H. M. Koenigswerther Inc.; Lador S. A.; Fred H. Lenway & Co. (2900) Inc.; Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish 2d, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J.

Notice of Appeal of Libellants Atkinson Haserick & Company, et al.

Herbert Higgins, Samuel L. Stedman, co-partners d/b/u the firm name and style of Carl M. Loeb, Rhoades & Company; Maryland Trading Corporation; Munro Kincaid Mottla Inc.; Mandel Brothers Inc.; Marble Supply Corporation of America; Monsanto Chemical Company; Marum Knitting Mills Inc.; Metasco, Inc.; Mitropa Corporation; Miller Products Export Corp.; Merino Wool Corporation; Modern Exportation; Harry Liebowitz, an individual doing business as Modern Glass & Wire Supply Company; Mercaderias Peruanas S. A.; Meyerhans & Cie. S. A.; Etablissement Francois Masurel Freres; Norge Boats Inc.; John E. Murray and Charles S. Nicholson, co-partners d/b/u the firm name & style of Nicholson & Company; North & Central American Hide Corporation; New Amsterdam Import Co. Inc.; Richard M. Ott & Sons, Inc.; Otis McAllister & Co.; O'Neill Brothers Inc.; Parker Machine Co., Inc.; Paper Corporation of United States; Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie, as Trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust; Pohjola Insurance Company; William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell E. Longshore, co-partners d/b/u the firm name and style of I. Reifsnyder Son & Co.; S. Rosenfelder & Son Inc.; Reliance International Manufacturing Co.; Walter H. Rothschild & Company, Inc.; S K F Industries Inc.; Irving M. Sobin Co. Inc.; Jos. Sultan & Sons Inc.; Paul A. Straub & Co. Inc.; E. Richard Schwabach, Julius Schure, M. W. Feingold, Paul D. Perutz, George J. Perutz, Fred W. Perutz, co-partners d/b/u the firm name and style of Schwabach & Company; Christopher Smiles & Co., Inc.; F. Schumacher & Co.; George Scherr Co. Inc.; William Steck & Co. Inc.; Stand-

ard Sales Steel Co. Inc.; J. Shore & Co.; R. K. Sterling and Maude A. Sterling, co-partners d/b/u the firm name and style of D. L. Sterling & Sons; A. Samyn Permandt; Societe Des Mines Et Fonderies De Zinc De La Vieille Montagne (S. A.); Stein, Hall & Company, Inc.; Switzerland General Insurance Company, Ltd.; F. H. Taussig; The Travelers Fire Insurance Company; Touraine Flowers Inc.; United Hat Fur Cutting Company; Bernhard Ulmann Co. Inc.; Ullmann-Allied Overseas Associates, Ltd.; Union Des Fabriques Belges De Textiles Artificiels S. A.; Western Dairy Products Inc.; S. H. Waldstein Co. Inc.; Wool Distributing Corporation; Georg Wertheimer; W. W. Windle Company; Rembert Wurlitzer; Theodore Willich, Albert Willich and Anton F. Dolce, co-partners d/b/u the firm name and style of Willich & Company; David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners d/b/u the firm name and style of Samuel Zeitlin's Sons; B. N. S. International Sales Corp.; W. L. M. Bensdorp Company; N. V. Tweka Tricotfabrieken; Duesberg-Bosson Machines Textiles S. P. R. L.; Charles Censor; Garnindustrie G. M. B. H.; A/S Dansk Kodekstrakt Co. Aabenraa; Andels-Svineslagteriet i Kolding; United Nations; Edward S. Blake and "John" Boyle (the name "John" being fictitious, the true given name of said person being unknown) co-partners d/b/u the firm name and style of Blake & Boyle

(2901)

appeal to the United States Court of Appeals for the Second Circuit from the Final Decree entered herein on

the 27th day of November, 1956, and from each and every part of said Decree.

Dated: New York, N. Y.
December 14, 1956.

Yours, etc.,

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Libellants
Office & P. O. Address:
99 John Street
New York 38, N. Y.

To:

HERBERT A. CHARLSON, Esq.,
Clerk of the United States
District Court for the Southern
District of New York

MESSRS. DOW & STONEBRIDGE,
Proctors for Respondent
70 Pine Street
New York, N. Y.

Notice of Appeal of Libellants American Smelting & Refining Company, et al.

(2907A)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A. 178–342

AMERICAN SMELTING & REFINING CO., et al.,
Libellants,

—against—

BLACK DIAMOND STEAMSHIP CORP.,
Respondent.

Sirs:

PLEASE TAKE NOTICE that libellants American Smelting & Refining Co.; Bell Telephone Manufacturing Company, S. A.; Frederick H. Cone & Co., Inc.; Jos. Rosenthal's Sons Inc.; William T. Newbold and James M. Reilly, co-partners doing business under the firm name and style of Nathan Trotter & Co.; Firma J. Van Beelen C. V.; and C. J. Van Houten & Zoon, N. V., appeal to the United States Court of Appeals for the Second Circuit from the final decree entered herein on the 27th day of November 1956 and from each and every part of said decree.

Dated: New York, N. Y.
January 15, 1957.

Yours, etc.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Libellants
Office & P. O. Address:
99 John Street
New York 38, N. Y.

Notice of Appeal of Libellants American Smelting & Refining Company, et al.

To:

Dow & Stonebridge, Esqs.,
Proctors for Respondent
70 Pine Street
New York, N. Y.

Final Decree in Maria Angelina Verbeeck, et al.

(2942)

In a stated term of the United States District Court for the Southern District of New York, held at the Court House, New York, New York on the 27 day of November, 1956.

Present: The Honorable E. J. Dimock, *District Judge.*

A. 178–380

Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Lee Verbeeck,

Libellants,

—against—

Black Diamond Steamship Corporation and Black Diamond Lines, Inc.,

Respondents.

This cause having come on to be heard in its regular order on February 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27 and 28, 1956 upon the pleadings and proof, and having been argued and submitted by the advocates of the respective

parties, and the court, after due deliberation, having rendered its opinion in writing and directing a decree dismissing the libel herein with costs and the respondents costs having been duly taxed at the sum of $34.

Now, on motion of Dow & Symmers, proctors for the respondents, it is

ORDERED, ADJUDGED and DECREED that the libel herein be and the same hereby is dismissed on the merits and the respondents Black Diamond Steamship Corporation and Black Diamond Lines Inc. recover of the libellants and their stipulators for costs the sum of $34, costs as taxed, which sum shall bear interest from the date of this decree until (2943) paid and that the respondents have judgment and execution against the said libellants therefor.

E. J. DIMOCK
U. S. D. J.

Notice of Appeal of Libellants Maria Angelina Verbeeck, et al.

(2703)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A 178–380

MARIA A. VERBEECK, et al.,

Libellants,

—against—

BLACK DIAMOND STEAMSHIMP CORP.,

Respondent.

Sirs:

PLEASE TAKE NOTICE that libellants Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck, appeal to the United States Court of Appeals for the Second Circuit from the Final Decree entered herein on the 27th day of November, 1956, and from each and every part of said Decree.

Dated: New York, N. Y.
January 7, 1957.

Yours, etc.,

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Libellants
Office & P. O. Address:
99 John Street
New York 38, N. Y.

To:

MESSRS. DOW & STONEBRIDGE.
Proctors for Libellant
70 Pine Street
New York, N. Y.

Notice of Appeal of Claimants Maria Angelina Verbeeck, et al.

(2946)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A 174–34

In the Matter of the Petition

of

SKIBS A/S JOLUND,

as owner of the M. S. "Black Gull", for exoneration from or limitation of liability.

Sirs:

PLEASE TAKE NOTICE that claimants Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck, appeal to the United States Court of Appeals for the Second Circuit from the Final Decree entered herein on the 27th day of November, 1956, and from each and every part of said Decree.

Dated: New York, N. Y.
January 7, 1957.

Yours, etc.,

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Claimants
Office & P. O. Address:
99 John Street
New York 38, N. Y.

Notice of Appeal of Claimants Maria Angelina Verbeeck, et al.

To:

HERBERT A. CHARLTON, Esq.,
Clerk of the United States District Court
for the Southern District of New York

PYNE, BRUSH, SMITH & MICHELSON, Esqs.,
Proctors for Petitioner
116 John Street
New York, N. Y.

ABBERLEY, KOOIMAN & AMON, Esqs.
Proctors for Claimants
55 Liberty Street
New York, N. Y.

THOMAS H. WALKER, Esq.,
Proctor for Claimant
Pier 9, North River
New York, N. Y.

BARRON, RICE & ROCKMORE, Esqs.,
Proctors for Claimant
10 East 40th Street
New York, N. Y.

(2947)

JACOB RASSNER, Esq.,
Proctor for Claimant
15 Park Row
New York, N. Y.

COOPER, OSTRIM & DEVARCO, Esqs.,
Proctors for Claimants
655 Madison Avenue
New York, N. Y.

DOW & STONEBRIDGE, Esqs.
Proctors for Claimant
70 Pine Street
New York, N. Y.